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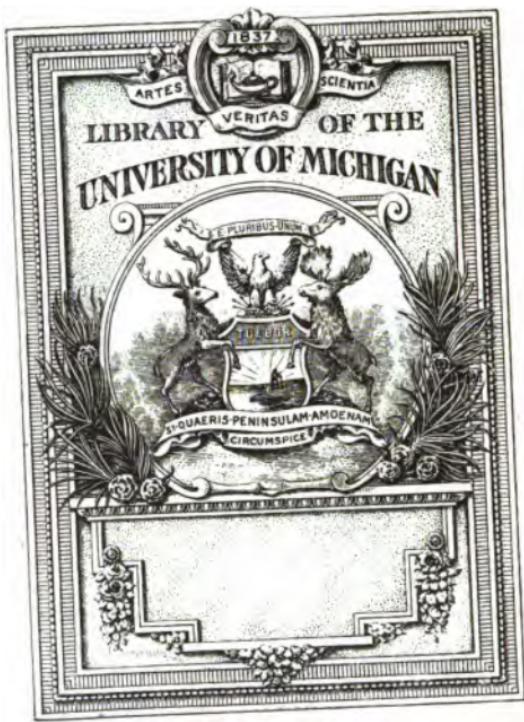
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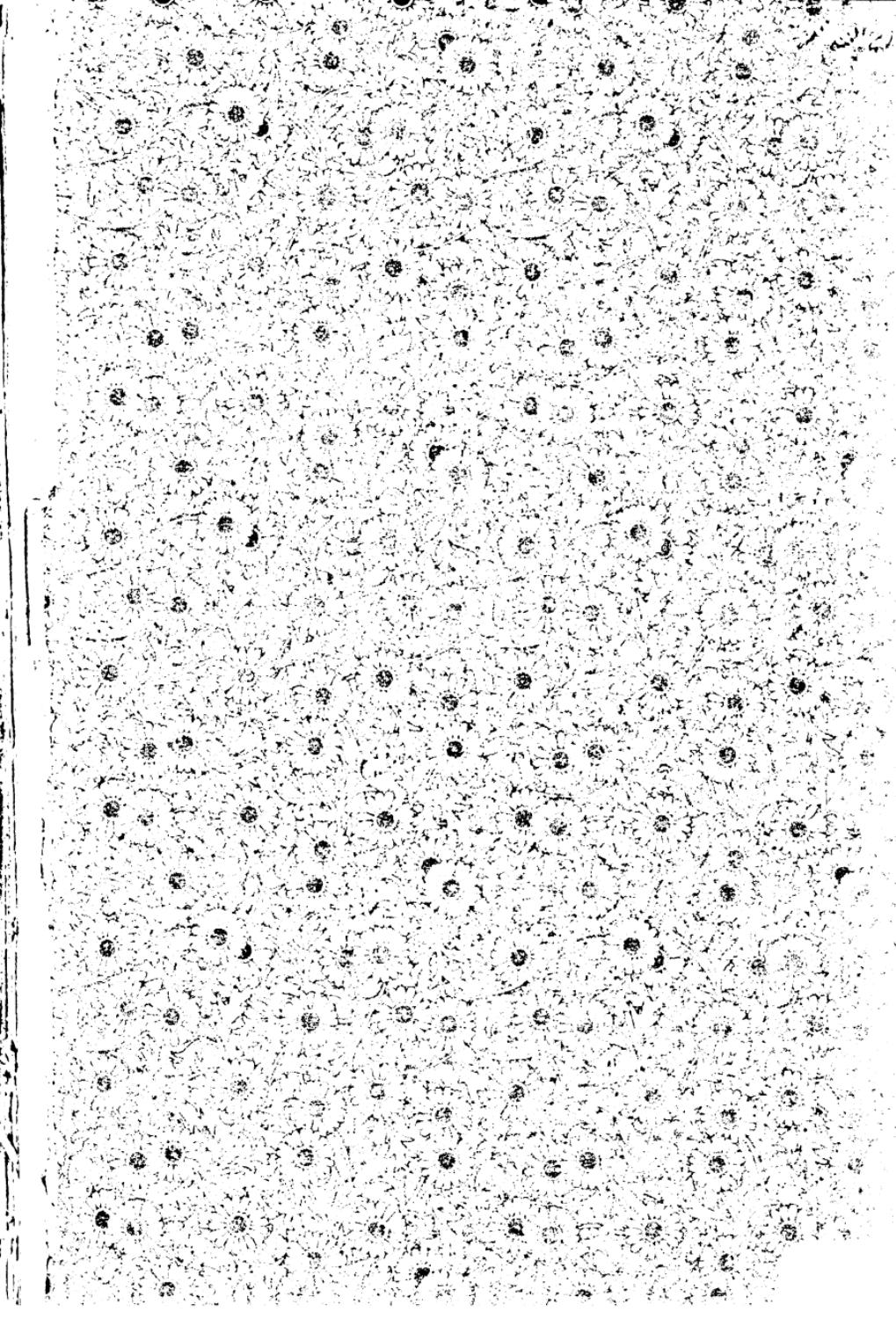
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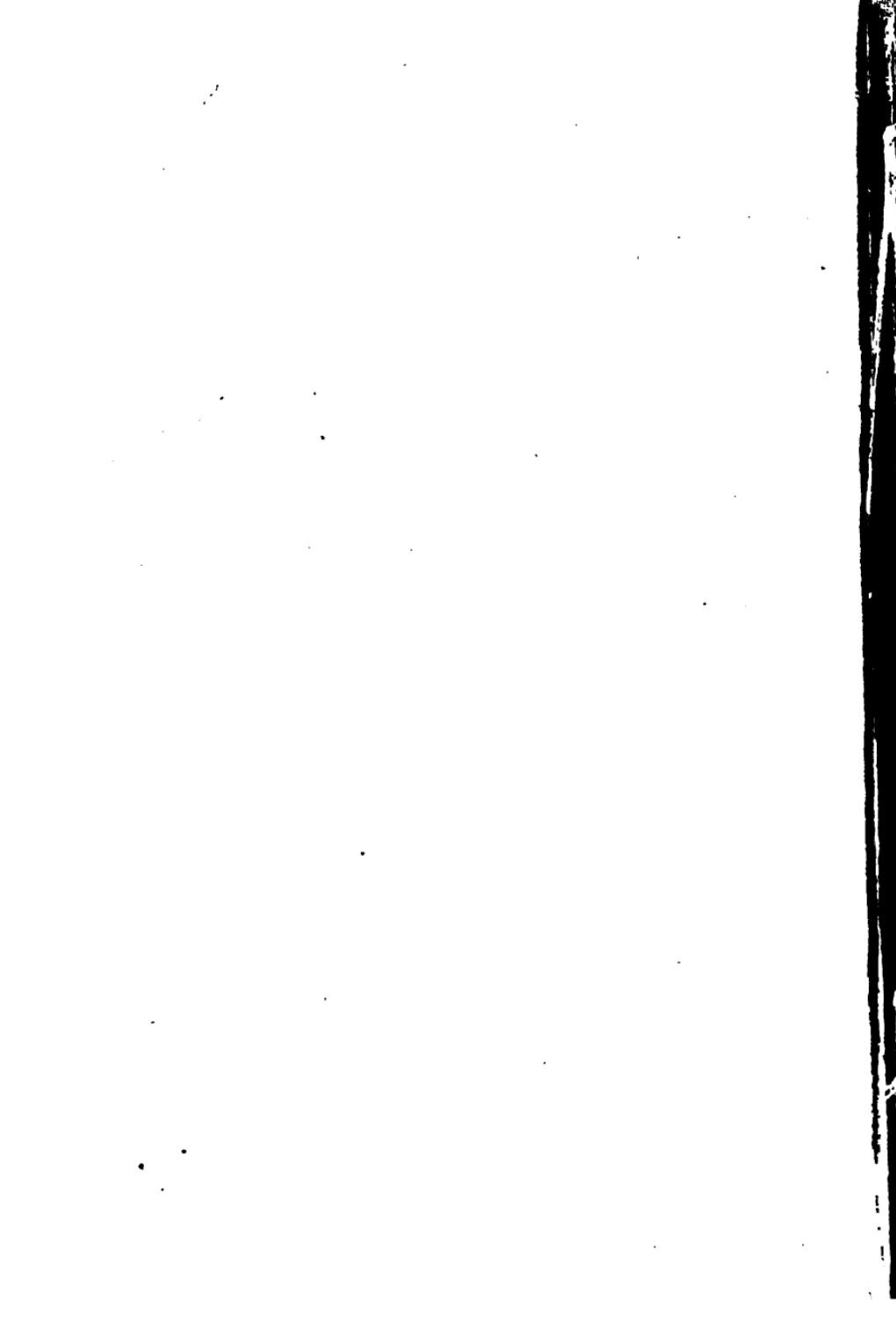
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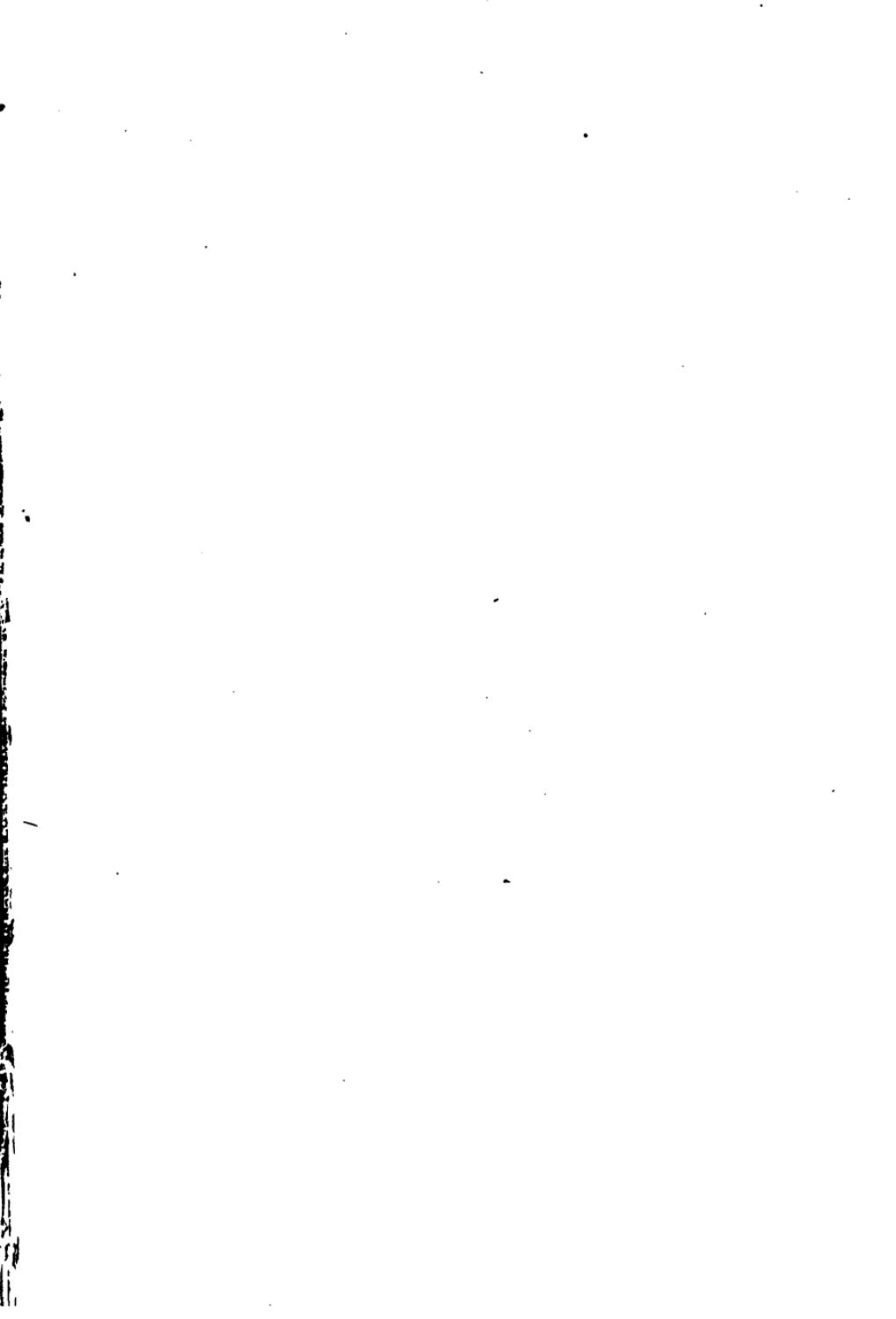




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THE LAW  
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HUSBAND AND WIFE

COMPILED FOR POPULAR USE

BY

LELIA JOSEPHINE ROBINSON LL.B.

MEMBER OF THE BOSTON BAR

AUTHOR OF "LAW MADE EASY" "WOMEN JURORS IN WASHINGTON  
TERRITORY" ETC.

*"Ignorantia juris neminem excusat."*

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**THE PORTIA CLUB**

***This Little Volume***

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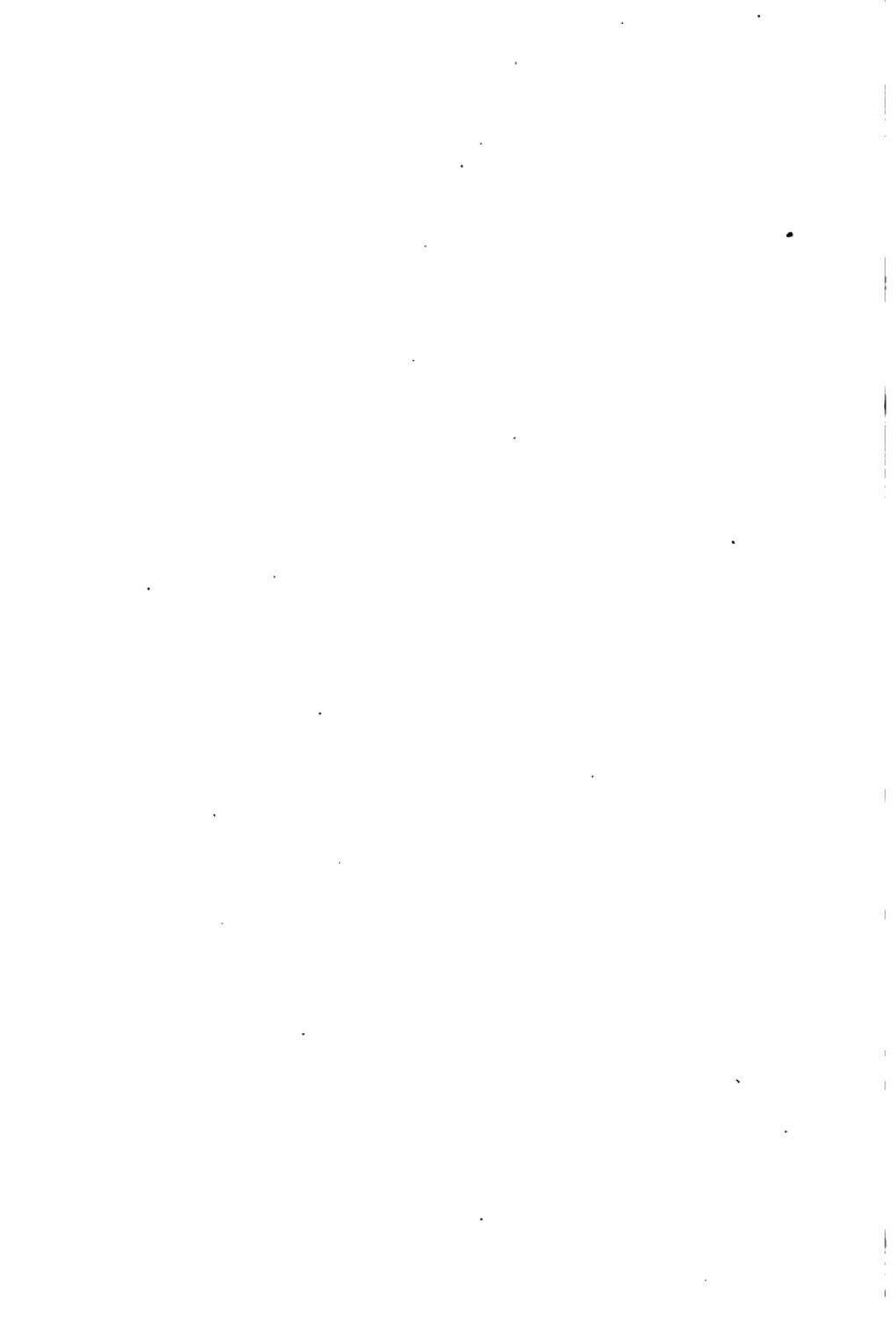
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## **LAW OF HUSBAND AND WIFE.**



# LAW OF HUSBAND AND WIFE.

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## INTRODUCTION.

THERE is probably no subject on which information is more sought or more needed by the people of the United States than the law defining the mutual rights of husband and wife, the respective claims of each on the property of the other during the continuance of the marriage relation and after its termination by death or divorce, the ability or disability of married women to make contracts, sue and be sued, enter into business or trade relations, or to form business partnerships, either with third persons or with their husbands ; and unfortunately also there is a very considerable demand for information on the subject of separation, divorce, the custody of children, and alimony. Such information should always be obtained from some reliable lawyer when especial occasion arises therefor ; and all the facts of the particular case should be set forth carefully, so that his advice may be intelligently given and safely followed. But people in this age of individualism have an irrepressible

desire for knowledge of their own on all subjects which appertain to every-day life, and they are not willing to rest ignorant of the laws governing the marriage relation, nor will they be content with such stray fragments of knowledge as they may obtain in the way of legal advice when occasion imperatively demands that it be asked and paid for. Nor are they far wrong, for even admitting that the maxim, "A little learning is a dangerous thing," applies more forcibly to a smattering of law than to other branches of knowledge, it is often much more emphatically true that the despised mite of information gained in season would save people from blunders whose effects can be remedied, if at all, only by the expenditure of a great deal of money, time, and trouble. Especially since the common-law status of married women, and provisions for the distribution of property of a deceased husband or wife, have been changed almost beyond recognition in nearly every State of the Union, no two of which entirely agree on these points, the result has been that people have confused ideas of their legal rights, and frequently, not recognizing the necessity for legal aid, they act without either advice or knowledge, to their own disadvantage. An illustration which not seldom arises in Massachusetts is the confusion into which our statutory enactments of the last twenty years have thrown

the subject of married women's contracts. Apparently the law is very clear and simple. A married woman may make any contracts which her husband may make, and they will be as valid and binding on her as on him. But let husband and wife attempt to make any kind of contract with each other, and it is absolutely void. If the husband loans his wife money and takes a mortgage on her property as security, or if she makes a loan to him and he gives her his note for the amount, and the transaction takes place with entire good faith on both sides, it is none the less invalid, and the money cannot be claimed from the other's estate in case of death or insolvency ; while the note and mortgage are mere waste paper.

A general idea of the common law on this class of subjects should certainly be a part of the education of every individual, supplemented by as much information concerning the statute law of his or her own State as can be gained ; and this knowledge may be safely had, provided it be remembered that in cases where action of any kind must be taken, it will not be safe to rely on such fragmentary knowledge, the only course being to take the best professional advice that can be had, and to follow it.

It is this general idea of the common law concerning marriage and divorce which the chapters

of this little volume will endeavor to give in as simple and popular a form as possible; while the abstracts in the latter part will give a condensation of the more important statutory enactments on the subject in the various States. It must be remembered that the common law underlies the statute law in all our States except in the few which were first settled by other nations than the English, and that it still prevails except just so far as it has been changed by the Legislature; so that it is necessary to know the common law first, and then build upon it the ever-changing structure of statute law. The abstracts will give the statute laws on the subject as they exist at the date of this present writing, so far at least as the latest volumes from the various States are obtainable at our law libraries. And in later editions of the work, such changes will be made as legislative action may make necessary; but any one who has the book and chooses to do so, may keep himself informed by examining the laws of his own State passed at future sessions, and annotating his copy whenever necessary. For the information of those who may wish to pursue the subject further than its brief treatment herein, I will add that in each State the decisions contained in the volumes of reports of cases tried in the higher courts construe and declare the application of the law in that State, both common

and statute; and that by visiting a law library or the office of a friendly attorney, and referring to a digest of the decisions, or to the indexes of the volumes of reports themselves, any one may find the cases on the subject, and may read them with more or less advantage according to the degree of technicality which involves them. Many of these cases would be entirely intelligible to any person unlearned in the law, who had read these few following pages. I have seriously considered the advisability of citing cases in support of the propositions of law which I have laid down; but to do so to such extent as to be useful to readers in different parts of the country would be only to encumber my pages with material for which probably but few readers would care, and I have therefore concluded to omit them altogether, and leave each one who cares to read cases to find them for himself through the medium of digests and indexes. The best textbooks are Mr. Bishop's "Commentaries on the Law of Marriage and Divorce" and "Commentaries on the Law of Married Women;" and Mr. Schouler's "Treatise on the Law of Domestic Relations."

A strong demand has been made on me for such a work as this ever since my larger book, "Law Made Easy," was published a few years ago; and from no source has the call been louder or more persistent than from clubs and societies of

women all over the country who are banded together for study, and who seek among the first branches of knowledge some information regarding the laws that especially concern women, and I have had these societies constantly in mind while preparing the work. I think it will furnish exactly the line of study which they desire, for the laws that especially concern women are only those on the marriage relation. Except in the way of political disabilities, there are now no laws that discriminate against women *as women*,—or rather those that do so are so very few and of such minor importance as to be scarcely worth considering; but it is at her marriage that a woman walks into a complicated legal net whose meshes entangle her the more closely with every step she takes, unless she is led intelligently by the guide whose name is Knowledge. Time may be when all this will be changed, and the law concerning marriage and married women will be simple and clear; but that time is not yet.

That the subject of this work is of the same interest to men as to women goes without saying, for whatever stage of enfranchisement our sex may attain, we can never enter the marriage relation independently of the other.

LELIA JOSEPHINE ROBINSON.

BOSTON, June, 1889.

## CHAPTER I.

### MARRIAGE.

*"It is not good that man should be alone."*

THE institution of marriage is the foundation-stone of the social structure. All that has been wise and noble, beneficent and valuable, in the successive civilizations of ancient and modern times, has been directly traceable, in greater or lesser degree, to this underlying principle of the family life; and the direct result of the introduction of carelessness and licentiousness into the matrimonial relation has always been the deterioration of the social and political structures.

The higher forms of civilization have always been attended by monogamous marriage, which has been cherished by the Government and protected by its laws as the chief object of its regard, well knowing that on its careful preservation all of general good depends. Great changes have taken place from time to time in the nature of these laws regulating marriage and the rights and disabilities of the parties to it; but in the main, the intention of law-makers in all times has doubtless been to

secure the greatest good to the greatest number, and the tendency has been continually toward improvement, until now, in a few of our Western States, the ultimatum of possibility concerning the property rights of husband and wife seems to be rapidly approaching.

It is always well to have a definition on which to base consideration of any subject; and that of marriage given in Bouvier's Law Dictionary is a fairly good one: "Marriage is a contract, made in due form of law, by which a man and woman reciprocally engage to live with each other during their joint lives and to discharge toward each other the duties imposed by law on the relation of husband and wife."

Marriage is undoubtedly a contract, but it differs in several important particulars from all other contracts; and being by far the most important of human transactions, it should be understood more clearly and definitely in its legal relations than it usually is.

It is a contract, because the first essential to its creation is the free and mutual consent of the parties who bind themselves by its vows. If this consent be gained by the exercise of force or fraud, the marriage may be set aside. But mere over-persuasion brought to bear on a young girl by her relatives, in consequence of which she is induced,

against her wishes and better judgment, to marry a man she dislikes, is not such force as will invalidate the marriage, even though she leave her husband a few days after the ceremony, as I was obliged to tell an unhappy woman who came to me for advice a few days ago. She has no remedy.

In this, as in all contracts, the parties must be legally and mentally capable of binding themselves. But the legal qualifications of capacity differ, for while minors may not bind themselves by other contracts (except by a limited class known as "for necessaries"), they may by that of marriage after having passed the age of childhood, fixed by common law at fourteen for boys and twelve for girls, and by statute in some States at a year or two older.

If a child below the legal age should marry, the marriage is not necessarily invalid, provided he or she be above the age of seven years. If the parties continue to live together after both have attained legal age, the marriage is thus ratified; but either party may disaffirm it by ceasing to live with the other before that time arrives. This is the common-law rule on the subject; and as has been said before, it is still law wherever it has not been distinctly set aside or changed by statute. No statute in Massachusetts has established any other rule.

On the other hand, parties who are related to each other within certain specified degrees of affinity

or consanguinity may enter into any other contract with each other, but not into that of marriage. The rule is general everywhere in modern times that relatives nearer than first cousins cannot marry and in some States marriage is not allowed between relatives of this degree. The disqualification of affinity, prohibiting marriage with near relatives of a deceased wife or husband, is not drawn so strictly in this country as in England, where marriage with a deceased wife's sister or husband's brother is forbidden. The statute regulating this subject in Massachusetts, which may be taken as a fair sample of those generally in force in the United States, is as follows:—

“ No man shall marry his mother, grandmother, daughter, granddaughter, step-mother, sister, grandfather's wife, son's wife, grandson's wife, wife's mother, wife's grandmother, wife's daughter, wife's granddaughter, brother's daughter, sister's daughter, father's sister, or mother's sister. No woman shall marry her father, grandfather, son, grandson, step-father, brother, grandmother's husband, daughter's husband, granddaughter's husband, husband's father, husband's grandfather, husband's son, husband's grandson, brother's son, sister's son, father's brother, or mother's brother.”

There are other disqualifications for marriage which do not disqualify for other contracts, chief among which is that of a previous valid marriage

of either party which has not been annulled by death or divorce. A marriage illegal for this cause is void from the beginning, and the guilty party is liable for bigamy.

The disqualification of race chiefly obtains in our Southern States and a few of the Western ones, where marriage between whites and persons of color is generally void and renders the parties liable to criminal prosecution.

Physical incapacity for the marriage relation also disqualifies.

Marriage further differs from the ordinary contract in this,—that while parties to the latter may arrange its terms and obligations to suit themselves, the terms, obligations, and rights of the marriage relation, and the duties arising therefrom to each other, to children, and to the public, are fixed for all by the general law of the land, and can only be altered by legislative act. By mutual consent, too, the parties to other contracts may terminate their relations at any time, but the parties to a marriage contract cannot do this; nor is the marriage terminated by the subsequent incapacity, mental or physical, of one party to perform his or her marital duties, although if such incapacity existed at the time when the marriage was celebrated, it would absolutely disqualify the party from entering into the marital relation and assum-

ing its duties. Many people suppose that hopeless insanity after marriage will give the other party divorce, but the heartless cruelty of such a cause must be apparent on second thought to all, and there is but one State where it is named as a ground therefor. A valid marriage once entered into can only be terminated in one of two ways; namely, by the death of either party, or by a judicial decree of divorce given by a tribunal which has jurisdiction over the case, and in exact accordance with the laws regulating the subject in the particular State where the action is taken. "The obligation is created by the public law, subject to the public will, and not to that of the parties."

This public law, in establishing the marital relation, has conferred certain privileges on parties thereto, and imposed certain disqualifications likewise, the nature of which has greatly changed as the centuries have passed from the old to the new, bringing with them the demands and necessities of our later civilization. These changes are still making, and will continue so to do until the relations of husband and wife to each other, to their children, to the public, and concerning their respective property rights, shall give general satisfaction. There has been a vast deal of legislation on this subject during the past forty years, both in this country and in England,—and indeed in Continental coun-

tries where the common law does not prevail, as witness the recent divorce law in France ; and so continually and rapidly have the alterations succeeded one another from year to year that no lawyer will venture to state what the law is regarding marriage or divorce in any other State than his own, without carefully examining the statutory enactments and judicial decisions thereon.

The principles of law concerning the celebration of marriage have come down to us through the centuries from remote times, but not without important changes ; and the subject is one which is now exciting the attention of some of our greatest legal and ethical minds, but concerning which there is not a little diversity of opinion.

By the old canon law, consensual marriages were valid ; that is, the mutual consent of the parties themselves was sufficient without further formalities or restrictions. This was the law in force when the colonists founded our country, and it was brought with them, thus becoming the common law here. By the Council of Trent, the doctrine of the canon law in this respect was changed, and a code of severe restrictions imposed. But the provisions of this council were only binding where they were formally adopted by the secular authorities ; and they were not thus adopted in the French or Spanish colonies of America, and consequently these

restrictions never became the law in those colonies, nor in the States which have been formed from them. Nor were they ever adopted in England, where, however, certain restrictions on the solemnization of marriage were imposed during the reign of George II., by which it was provided, among other things, that marriages must be performed by parish priests and within canonical hours. But these provisions did not apply to the colonies ; so by the common law of our entire country, the free and mutual consent of parties, followed by cohabitation, was sufficient to constitute a valid marriage, and all further restrictions are of purely statutory origin in the various States. In some States, where the statute provides for certain preliminaries and formalities concerning licenses, witnesses, and the parties who shall be competent to solemnize marriage, the result is not to invalidate marriages which take place without these formalities, but to provide an easy and recognized legal proof of marriage for those who choose to avail themselves of it, and to impose penalties on clergymen or others who solemnize it without regard to these restrictions ; for however valid a marriage of mere consent may be, it is usually a very difficult matter to *prove* its validity. But it has been, and probably still is, the policy of the law of our country to encourage marriage, and to uphold it in every way

possible. To quote from Mr. Bishop, whose treatise on "Marriage and Divorce" is an admitted authority everywhere,—

"There was a time when the Anglo-Saxon race, though rude and uncultivated in modern chicanery, never inflicted the disgrace of concubinage on a woman who lived with one man, and one man only, as his wife, and bore him children, unless the man was of too near affinity or consanguinity to her, or unless he had another wife to whom he was earlier married. But in these days of modern refinement, many an Anglo-Saxon woman learns, or her offspring after she is dead learns, that some slip in the form of marriage has made her a sort of select strumpet, and has made her children bastards. Men who like to deceive honest women, and men who value riches in a wife, or a settlement, more than they value true marriage, admire this, and they consider the Scotch people, who do not like it, and the people of some of our States, who also do not like it, to be, by reason of their want of love for refinement, almost barbarous. May barbarism, if this is such, long prevail in the United States!"

The provisions of the Massachusetts statute concerning the solemnization of marriage, require that the vows be taken before a justice of the peace, or a minister of the gospel ordained according to the usages of his denomination, and who resides in the Commonwealth and continues to perform the functions of his office; and every marriage must be

solemnized in the city or town in which the person solemnizing it, or one or both of the parties to it, resides. But an exception is made in favor of Quakers, who may be married according to their own society practice. The statute also makes explicit provisions concerning the notice of intention to marry, which must be previously filed with the town clerk, and concerning the certificate to be given by him, and imposes penalties upon the clerk for issuing such certificate to a male under twenty-one, or a female under eighteen years of age, without the written consent of the parent, master, or guardian of such minor; upon any justice or minister who joins persons in marriage contrary to those provisions of the statutes which regulate it; and upon any other party who attempts to solemnize a marriage without proper authority so to do.

A few other States have by similar legislative action provided that marriages shall not be valid unless performed in accordance with certain defined statutory requirements. Such provisions cannot be set forth at length in these pages, but may readily be found by consulting the statutes themselves in any State, provided one reads very carefully and is not misled by general expressions into regarding laws as prohibitory which are in reality only declaratory or mandatory. It is sometimes the case however, that where a statute may not appear, on

the face of it, to declare all marriages void which are not performed in accordance with its provisions, such a construction may have been put upon it by the court, and a reference to the reports of judicial decisions as well as to the statutes would in such case be necessary, before a conclusion as to the law on the point could be safely arrived at.

## CHAPTER II.

### PROPERTY RIGHTS.

*“And they twain shall be one flesh.”*

THE maxim quoted above is undoubtedly of highest authority and time-honored sanction, but there may be room for question as to the boundaries by which this unity of the married pair was intended to be limited. As the physical, mental, and even moral life of each of the two unmarried individuals continues its own separate existence after the two are joined in matrimony, however greatly it may be affected and influenced by the union, it may be legitimately doubted whether their legal existence should become so absolutely blended and identified by marriage as to justify the doctrine that “the husband and wife are in law but one person”—and that one, the husband! This theory is peculiar to the English common law, dating from feudal times, and having its rise in necessities of the age. In earlier civilizations, and in modern ones where the civil instead of the common law has prevailed, husband and wife always have been two distinct legal

individuals, each of whom might have and hold separate property, be bound by separate contracts and debts, and sustain separate injuries ; might sue and be sued, and make any agreement with each other to hold their property in common or in partnership. This doctrine of the civil law was brought to such portions of this country as were settled by French and Spanish colonies, and may now be found in the States which have grown up from those colonies, as California, Texas, and Louisiana, in the "community" system of property which there prevails between husband and wife. Other Territories and States in near proximity to these, preferring this doctrine to that of the common law, have adopted it into their codes, and its influence has been gradually making itself felt in some parts of the middle West. Thus the law in California on the subject, briefly stated, is as follows : All property owned by either husband or wife at marriage, and all acquired by either after marriage, by gift, inheritance, or by the will of any deceased person, together with rents, income, and profits thereof, constitutes the separate property of each.. All acquired during marriage by either in any other way constitutes the common or community property of both. The husband has entire control of the community property during his life, and may dispose of it without the wife's consent, but not so as to defraud her of her

half-interest in the proceeds; and upon his death, the widow is entitled to one half of what remains after payment of community debts and expenses of administration. With such restrictions as always exist between parties in confidential relations, husband and wife may make contracts and conveyances one to the other, and suits may be brought by one against the other to enforce them.

But the English common law system differs very greatly from this. At marriage, all the wife's personal property goes directly and absolutely to the husband, and the old common law rule was that if he died without leaving it to her by his will, it went to his heirs. (It must be remembered that in many States the wife's personal property does not now become her husband's; each reader must consult the Abstracts of Statutes for the law in his or her own State.) If the wife owns real estate when married, the title remains in her; but the husband enters into immediate control of it by the common law, all the rents and profits become his, and if he survives her, he retains control of it and of all which may have come into her possession in any way during the marriage, and receives the rents and profits for his own use during his life, and only at his death does it go to her heirs. This right of the husband in the wife's realty, called his estate by the courtesy, only accrues to him, however, if a

legitimate child is born alive during the marriage. He cannot be deprived of the right when it has once accrued, and any deed or mortgage given by a wife of her real estate either before or after the birth of a child, only conveys her title, subject to the husband's right of courtesy, unless he expressly relinquishes it by himself signing the instrument. It is said that this right originally arose because the father was liable for the support of the children; but whether they live or die, or whether he supports them or not, his estate by the courtesy is equally sure. One other class of property remains to be considered in this connection; namely, the wife's *chooses in action*,—that is, claims or debts due her. These become the husband's only if he reduces them to his possession; that is, collects the money due on them. If he neglects so to do, on his death they may be collected by the wife, and are hers.

On the other hand, the only interest which the common law gives a wife in the property of her husband is that of dower in his real property. This dower right is not conditioned on the birth of a child, as is that of courtesy, and only requires a valid marriage, ownership of the property by the husband at some time during the marriage, and death of the husband. The right gives to the widow, for her lifetime, one third of all the real property which her husband owned, either in pos-

session or the right to possession during the marriage. Therefore, any deed or mortgage given by a husband of his real estate only conveys an incomplete title, subject to his wife's right of dower, unless she also signs the conveyance expressly releasing her dower. But to bind herself by such a signature, she must be twenty-one years of age, except in a few States where a woman is of legal age at eighteen, and in a very few others where a wife of any age may release dower.

Before marriage, however, the parties may bind themselves by an ante-nuptial contract, by which some portion or all of the woman's property, or of the man's either, is transferred to a trustee to hold in trust for the wife during the marriage, paying the income to her during the husband's life, and transferring the property itself to her after the husband's death. By any such arrangement made prior to the marriage the parties will be bound; but if it be made subsequent to the marriage, it is not binding on either party, for the couple being now one person in the eye of the law, they cannot contract with each other; the husband may still, if he chooses to do so, convey property to a trustee for his wife's use, but the wife cannot compel it by virtue of any promise made by him after marriage. Thus in a deed of land by the husband to a third person, the wife may release her dower to that

third person, and it will bind her ; but if she release it to her husband himself after marriage, however solemnly and under seal, she is not bound thereby, and her dower right still remains, if she chooses to avail herself of it.

By the common law a wife can neither sell nor give away any personal property of hers or of her husband's during her life, because it is no longer hers after marriage, but his. She cannot contract a legal debt nor bind herself by any kind of agreement, except in release of her dower, as already mentioned ; and even to do this she must be examined out of her husband's presence by the magistrate before whom she acknowledges her signature as to whether the act is of her own volition without compulsion from her husband. She cannot sue or be sued unless the husband is joined with her in the suit, and no judgment can be entered against her ; while if a judgment be entered in her favor, the benefit thereof accrues to her husband only. She cannot make a will at common law, nor can she receive a legacy (unless it is given to trustees for her sole and separate use) ; and if a legacy be paid to her, the executor can be compelled by the husband to pay it over again to him. She cannot act as executor, administrator, guardian, or trustee, unless by his consent. Since the husband and wife are one person, contracts or gifts between

them are not recognized or upheld by the common law, nor can they enter into a business partnership; nor can they testify for or against each other in a civil suit, nor, with a few exceptions, in a criminal proceeding.

The husband becomes immediately liable upon marriage for all his wife's debts contracted previously; but after marriage he is only liable for a certain class of debts contracted by her, while she is not liable for them at all. This power of the wife to bind the husband by debts is only as his agent, and is so important a subject that it must be considered in another chapter somewhat in detail; for it has been very little changed or affected even by modern statutes.

All these doctrines of the common law concerning husband and wife depend upon the theory that he, and he only, is responsible for her maintenance and that of their children, and were intended to aid him therein. He is also responsible to a considerable degree for wrong actions committed by her; and it was in consequence of this responsibility that the old law gave him the right of correction over her, permitting him to chastise her with "a rod no larger than his thumb," or to imprison her if he deemed it necessary. On account of his responsibility for the maintenance of the family also, he is the legal guardian of their

children, and can dispose of them as he sees fit, even appointing a guardian by his will for their unborn child.

Whether these provisions of the common law by which a wife was reduced to a legal nonentity was based on the supposition that women did not know enough to be trusted to act for themselves, or, more probably, on the theory that in the marriage relation absolute supremacy and power in all things must be given to one only, need not be discussed here; for it is my intention only to state legal facts, without comment or any attempt to investigate causes. But that even in earliest times the scheme was found to be very faulty and full of hardships is shown by the fact that the courts of equity — which were not altogether bound by the rules of the common law — set to work to remedy the faults and ease the hardships of the law concerning husband and wife almost as soon as the law itself was formulated. Thus a wife might have an equitable separate estate; and in many cases contracts and gifts between husband and wife which could not stand in the common-law courts were upheld in the courts of equity. The prevailing doctrines were of course those of the common law, and it would only confuse if I were to attempt to set forth the equitable doctrines here at any length, or to show the finer points of distinction between the two systems of law on the

subject; but as some States still give married women only the power to hold and manage an equitable separate estate, and the abstracts of statutes in these States will necessarily refer thereto, I will try to give some idea of what the equitable separate estate is in the next chapter.

In some States—and the number is constantly increasing—curtesy and dower have been abolished entirely; and in their place statutes have given to the widow or widower a certain share in the estate of the deceased spouse, in case he or she has died intestate. These statutes, as also those in other States which have added further provisions for widows and widowers while retaining courtesy and dower, will be given in condensed form in the abstracts in the latter part of this volume.

A different provision from that which is fixed by law may be made for the survivor by the will of the deceased in any State or by the common law; but generally a widow must elect whether she will take such provision or take her dower or statutory share. Both cannot be taken unless the will distinctly shows such an intention. But the same restriction as to election between courtesy and the provision made by a wife's will does not seem to prevail concerning widowers, who it would appear may take both, unless expressly forbidden by statute or by the will itself.

## CHAPTER III.

### WIFE'S SEPARATE ESTATE.

*"Equity is the savior of woman."*

IT was stated in the last chapter that the common law of England forbade a married woman to hold or manage property in her own name, to make contracts, sue or be sued, or to claim her earnings. It was also stated that the courts of equity, or chancery, were far less stringent, and recognized the power of a married woman to have and to deal with an equitable separate estate, providing it were settled upon her in such a way that her husband could not legally claim it. Equity also allowed her to make contracts, and to sue and be sued in relation to such separate equitable estate, even in some cases to sue her husband concerning it, and to give testimony in regard to private conversations which had taken place between them on the subject, thus acknowledging to a very remarkable degree the independent identity of the wife. And in quite a number of our States, the English rule in this respect has been followed to a greater or lesser extent, many of them recognizing

a wife's power to deal with an equitable estate only.

This kind of estate is created by virtue of the doctrine of trusts. One may own property outright, in his own possession, to dispose of as he thinks fit, or some other person called a trustee may have the legal title to the property, which he holds and manages, paying the income thereof to the person whom the property is really intended to benefit. Thus this latter person has the enjoyment of the estate, but cannot sell it or dispose of the principal in any way. In order to secure to a married woman the certainty of an independent income which her husband cannot claim, a trust may be created for her benefit, by a relative or by her husband himself; or even she can create a trust for her own benefit, provided she does so before entering into the marriage relation. Her powers over this estate depend entirely on the terms of the trust itself,—that is, of the instrument or paper by which the trust is established,—and these powers and rights may be far beyond those which she could have at common law; but they can be enforced only in courts of equity. She can contract debts binding upon this equitable estate, and can make a will, or "appointment," as it is called, disposing of it at her death, even where otherwise she could make no will.

I think this brief explanation will give a sufficient idea of the subject to enable those who may refer to the abstracts of a State which recognizes a wife's power to deal only with a separate equitable estate to realize that this refers to property held by a trustee for her use. But the niceties of the distinctions and contradictions between the two systems, that of the common law and that of equity, have made the law of husband and wife a most complicated and difficult one; and the passage of innumerable modern statutes on the subject, while they have greatly relieved the hardships of the legal condition of both husband and wife, have by no means lessened those of counsel, whose business it is to ascertain just what that condition is.

Another time-honored custom in England, among people of means, has been to give to the wife a certainty of pecuniary independence by "marriage settlements," which, being drawn up by the lawyers representing the families of bride and groom, were signed and delivered before marriage, and gave a certain amount of money or property to trustees for the use of the wife. One feature of these settlements common among the wealthier classes is that of "pin-money," a certain amount being given her expressly for the purchase of dress and ornament. Sometimes this "pin-money" was of no inconsiderable amount, as in one case where thir-

teen thousand pounds a year was secured to a wife as pin-money.

But in our country the custom of marriage settlements has never become common, even among the moneyed class, and pin-money has been practically unknown. In some of our States, the "equitable separate estate" already referred to is the only way by which a wife can hold any property of her own. But in the great majority of them, statutes have given to married women certain rights of acquiring and powers of holding and managing property, with independent ability to make contracts which will be recognized by all the courts instead of in equity only. During the past forty years, the legislatures all over the country have been busy with the subject; and scarcely a session closes in any State without the passage of some act intended for the improvement of the property rights of married women. The result so far is that in many States of our country, married women have nearly the same powers of holding and controlling property that married men have, while in a few States the rights of husband and wife in this respect are distinctly stated to be identical.

In Massachusetts, all property of whatever kind owned by a woman at marriage, and all which comes to her after marriage in any way except from her husband, is her separate property, free

from his control or debts. From her husband directly she can only receive as gifts wearing apparel and personal ornaments, and other articles for her personal use, to the value of two thousand dollars ; and this only if it is not in fraud of the claims of previous creditors. Other personal property found in her possession, and to which she cannot prove her title, is presumed to belong to her husband. She has entire control of all her property, and may dispose of it during her life as she sees fit, except that she cannot convey her real estate without his signature so as to deprive him of his courtesy or other life interest therein, any more than he can convey his realty without her signature so as to deprive her of dower. But she cannot by her will deprive him of his courtesy or other interest in her real estate, or of more than one half her personal estate, unless he consents to the will. All her earnings for labor performed by her for any person other than her husband or her children during her husband's life, are hers alone, and may be sued for and collected by her in her own name. She may sue and be sued alone on all matters in which her claims or her debts only are concerned ; and she may make contracts of all kinds which will bind her and her property only. But with her husband she cannot make any kind of binding contract ; and if she borrows money

from him to use in her business, or if he borrows from her,—which is perhaps more often done,—neither can recover the money so borrowed from the property of the other, even after the latter's death or insolvency. However much the administrator of the deceased husband, or the assignee of the insolvent husband, may desire to recognize the wife's claim for payment out of the estate, he cannot do so under the law as it now stands. Her claim is absolutely void both in the law courts and those of equity in our State.

It is true that property belonging at one time to the husband is often found later belonging to the wife; but this is done (if legal at all) by the intervention of a third person, to whom the husband conveys the property, and who in turn conveys it to the wife.

So a wife, in Massachusetts, may enter into binding partnership business relations with any person except her husband, but not with him. But if she carries on business in her own name, or in partnership with others, she is required to file a "married woman's certificate" in the clerk's office of the place where the business is conducted, so that the public may not be misled into giving her credit on her husband's account, supposing the business to be his. If she does not file such a certificate, her stock in trade may become liable for her husband's

debts. On the other hand, if her husband fears that he may be held responsible for her business debts, he may file a certificate himself, and thereby be exempted from liability, for these certificates are open to public inspection, and people are bound to inform themselves on the matter before giving credit.

In many States a married woman is allowed to trade for her own exclusive benefit only in case her husband consents in writing with certain stipulated formalities.

At common law, the husband who took all his wife's personal property as his own at the moment of marriage took also all her debts which she owed before marriage, and was obliged to pay them. But as the possession of her property has been given to the wife, so the responsibility for her ante-nuptial debts has been removed from the husband, she and her property alone being liable for them now almost everywhere.

In general the husband's obligation to maintain his wife and children — that is, to supply them with necessaries of life suitable to his rank and condition — remains the same, notwithstanding the possession by his wife of property of her own ; and no claims for such necessaries can be enforced against the estate of the wife unless she expressly makes herself and her estate responsible for them

at the time when the contract is entered into, and in some States, not even then. So if a wife is wealthy and a husband poor, the family expenses cannot be claimed from the wife. Even the "poor laws," which require parents and children, grandparents and grandchildren, being of sufficient ability, to support each other in case of necessity, do not apply to wives. This state of the law has led to the suggestion — facetious, no doubt — that a "pauper husband's relief bill" should be introduced at the next session of our Legislature.

But in a few Western States, where the right of the mother to claim and control her minor children and to collect their wages is exactly equal to that of the father, she and her property are also made equally responsible with the father for their support and education, and in some cases for the support of the family, which presumably includes the husband. In some Western States also husband and wife may contract with each other and be bound thereby as legally as though they were unmarried, and may also enter into a business partnership together, it being no unusual thing to see a firm consisting of husband and wife. Little by little these innovations on the old doctrines of the common law, which reduced a wife to a legal nonentity, are being removed, and the liberal doctrines of the West, which could more easily

be introduced into the new constitutions and statutes of young States, are creeping eastward and taking firm root in our old soil; while in England the Married Women's Property Act, passed a few years since, has entirely swept away the mass of old legal learning and complicated decisions, practically giving to married women entire independence in all matters of property and business.

## CHAPTER IV.

### WIFE'S SUPPORT. — SEPARATE MAINTENANCE.

*"With all my worldly goods I thee endow."*

EVERYBODY knows that a husband is bound by law to support his wife, and in some cases to pay certain debts contracted by her; but there is much confusion in the popular idea which prevails as to the kind and extent of debts of her contraction which he can be compelled to pay, and very few seem to realize that it is not in her capacity as *wife* that she may charge him with her debts at all, but in her capacity as *agent*. Not as a wife, because if he chooses to provide for her necessities in any specific way, and actually does so provide, and forbids her to contract debts, and gives notice to dealers and others that he has forbidden her to buy on his credit, then, if they do trust her, they cannot claim payment from her husband. If after such warning from the husband, any one supplies necessaries to a wife, he can only charge them to the husband in case it can be proved that the husband has failed to provide for her support in a manner reasonably consistent with his station in

life. In such case, where the husband neglects or refuses so to provide for her, the wife becomes his agent to procure necessaries on his credit. The husband cannot take this agency away from his wife, though she may lose it by her own misconduct, as will be shown later.

Except for this agency to purchase necessaries when not provided by her husband, the wife can only become her husband's agent in the same manner as any individual may become the agent of another,—that is, by actual specific appointment, or by inference from repeated acts of agency sanctioned by the husband. When a man goes away and leaves a power of attorney with his wife to transact all business, or certain classes of business, for him and in his name, this is a specific appointment of her as agent; and so it is, if he should go with her to a certain dealer and authorize him to trust her on his account for purchases, either to a definite or indefinite amount, or if he give her a letter to the dealer to that effect. But if the amount was specified, the dealer could not charge the husband with purchases above that amount,—unless in the case already noted of failure of the husband to supply her with necessaries.

The agency which arises from former acts of the wife sanctioned by the husband may be illustrated by the familiar custom of purchases made by the

wife from grocers and butchers and other dealers in domestic commodities. The wife has purchased and the husband has paid the bills more or less frequently; and by so doing, he has acknowledged her as his agent to make purchases of the class, and the dealer is justified in considering the relation to be continuing until he shall receive notice from the husband to the contrary. And it has been held that a printed notice to this effect in a newspaper was insufficient in the case of a dealer with whom the wife had formerly dealt by her husband's authority, where the dealer failed to see the printed notice, and had received no personal notice. And in any case, a printed newspaper notice, or a personal notice, written or oral, by the husband, that he will not pay debts of his wife's contraction, will not relieve him from liability on such debts for suitable necessaries, if it can be proved that he does not provide for her himself in some other way, unless she is living apart from him by her own fault.

It must be understood that a dealer would also be justified in recognizing a servant, a child, a relation, or even a stranger, as the agent of the same man, if he should pay bills contracted by such person, and give no notice of the discontinuance of the agency thus established. This presumption of agency on the part of a person other than a

wife would not be so easily raised in the first place, however; for in the absence of any information or instructions from the husband not to furnish ordinary family supplies to his wife on his credit, the *presumption* that she has his consent to make such purchases as his agent is always exceedingly strong, and may be strengthened still more by certain facts,—as, for instance, his frequent or continued absence from home.

But, on the other hand, if a dealer knows that the wife has left her husband's house and is living apart from him, the presumption of her agency to purchase family necessaries may be weakened, and the dealer must be on his guard. For if she leaves home unjustifiably, she carries no agency with her, and her husband is not bound to pay even for necessaries of life that may be furnished her. But if she leaves him for just cause, the agency continues, and he is liable for debts for necessaries of her contraction,—*if* she contracts them on his credit; for if a wife, either living with or apart from her husband, contracts debts in her own name and the charges are made on the dealer's books against herself, then she, and not her husband, is liable for their payment. But if upon separation her husband makes her an adequate allowance, her authority to bind him by debts ceases. So, as is said above, if any person knows that the wife is

living apart from her husband, he is put on his guard and must ascertain that she has left home justifiably, and that she is not in receipt of a sufficient allowance or in any other way supplied by him with the necessaries of life, before he can safely give her credit with any fair prospect of being able to collect his claim from the husband should it be disputed. Of course this applies to claims for board, lodging, or medical attendance furnished the wife, as well as to those of dealers.

It must be remembered that it is only claims for "necessaries" which can in any case be collected from the husband when purchased by the wife (unless by special authority from him to make other purchases), and in reasonable accordance with the style of life which the husband has chosen. For the law makes him the arbiter not only of the place where the family shall live, but of the style of living; and unless the wife can prove that she actually suffers in health as the result of his miserly habits, and that he has sufficient means to live more comfortably, she cannot be heard in complaint. But the manner of his own life may be taken somewhat into account, and if he lives in expensive fashion himself, he probably could not compel his wife to live in a mean or poor way. It is very clear, however, that a wife's general agency to make purchases on her husband's credit stops at necessities,

and does not extend to luxuries. Sometimes it is not easy to draw the line of distinction between the two classes thus designated, but it is plain that in the English case where the wife of a man whose income was one thousand pounds a year bought jewelry within six months to the value of five hundred pounds, the jeweller could not collect his bill from the husband.

Now the burden of proof is on the creditor to show the facts from which arises the presumption of authority on the part of the wife to bind her husband by purchases as his agent. That is, the boarding-house keeper, grocer, dry-goods dealer, or other person who has given a wife credit on her husband's account without special authority from the latter to do so, and who sues him on the claim, must affirmatively prove as a part of his case, either that the wife was actually living with her husband, and that the credit was for family supplies suitable to his style of living, or that she was living apart from him justifiably, without adequate provision from him for the maintenance of life, and that the supplies were reasonable in quantity and quality. And it is sometimes a difficult matter for one who is not specially familiar with all the circumstances of a separation between a married pair to ascertain these facts; and there is in consequence a very natural reluctance to supply purchases on the hus-

band's credit to a wife living apart from him, and much hardship might thus be imposed on a perfectly innocent wife who is compelled to leave her husband's roof as the result of his misconduct, or who is deliberately abandoned by him. To obviate these difficulties, a law was passed in Massachusetts fourteen years ago, which after some slight changes by later legislation, now reads as follows :—

“ When a husband fails, without just cause, to furnish suitable support for his wife, or has deserted her, or when the wife, for justifiable cause, is actually living apart from her husband, the Probate Court may, by its order on the petition of the wife, or if she is insane, on the petition of the guardian or next friend, prohibit the husband from imposing any restraint on her personal liberty for such time as the court shall in such order direct, or until the further order of the court thereon ; and the court may, upon the application of the husband or wife or of her guardian, make such further order as it deems expedient concerning the support of the wife and the care, custody, and maintenance of the minor children of the parties, and may determine with which of their parents the children, or any of them, shall remain ; and may from time to time, afterwards, on a similar application, revise and alter such order, or make a new order or decree, as the circumstances of the parents, or the benefit of the children may require.”<sup>1</sup>

<sup>1</sup> Public Statutes, Massachusetts, chap. 147, § 33.

This proceeding in the Probate Court for an order of separate maintenance and custody of children is altogether different from an application for divorce, as will be readily seen, and is meant to cover the cases of unfortunate wives who cannot remain with their husbands, but who do not wish to break the marriage bond entirely, either by reason of religious scruples against divorce, or because of hope that the separation may be only temporary, or for lack of the technical grounds upon which to base a libel for divorce. Thus divorce for the cause of desertion is given only when the desertion continues unbroken for three years; but in the meantime the recently deserted wife may seek the legal custody of her children, and an allowance for her and their maintenance under the statute given above. An attachment may be placed on the property of the husband to secure his compliance with the order of the court; and other means may also be taken to compel payment by him of the sum or sums which the judge may order him to pay his wife for her maintenance and that of children intrusted by the court to her care. Usually the order is for the immediate payment of a certain sum proportioned somewhat to the means of the husband, intended to cover the expenses of the wife's application to the court, and subsequent periodical payments, weekly, monthly, or quarterly as the case may be.

In many other States there are provisions for the maintenance of deserted wives without divorce, which are more or less helpful and appropriate, and most of these will be found by reference to the Abstracts of Statutes in the latter part of this volume, under the title "Divorce."

## CHAPTER V.

### CUSTODY OF CHILDREN.

*"Give her the child, she is the mother thereof."*

MARRIAGE is something more than a contract; for other rights than those of the parties to it, and other interests than those of the public at large, are concerned. It is an institution upon which not the marital only, but the family relation is dependent — the life, education, and well-being of the children whom it brings into the world. And here is just the point of greatest difficulty in attempting legislation on the subject. It is so hard to tell what will be best for the children. And the universal policy of the law in this country is to consider the interest of the children themselves as paramount to the interest or the abstract rights of either of the parents, whenever any question arises as to their custody. Indeed, the common law recognizes no abstract right, as such, in the parent to have the custody of children — not even in the father. In the leading English case on the subject, *Wellesley v. The Duke of Beaufort*, where the children were taken from a father who was living in

adultery, and which went up on appeal to the House of Lords, Lord Redesdale, in the course of his opinion before the House of Lords, declared emphatically that paternal power is only in the nature of a trust reposed in the father, for motives of public policy. He said, "Look at all the elementary writings on the subject; they say that a father is *intrusted* with the care of his children; that he is intrusted with it for this reason: because it is supposed his natural affection would make him the most proper person to discharge the trust."

But though theroretically based on this principle of public policy, rather than the abstract individual right of the parent, the law as administered became practically one of the most arbitrary right, over which the courts exercised so little control (for they had the *right* of control if they would but have used it), that in another English case, *Rex v. Greenhill*, the father was allowed to take his children from his blameless wife and place them in charge of a woman with whom he cohabited. This infamous case, which has been repeatedly repudiated by the courts of the United States as bad law, hastened the passage of the English statute in 1839, which is known as Justice Talfourd's Act. Until this time the mother's claim to the custody of her children had not been recognized at all; and by this act the father's claim was still recognized as para-

mount, but the court was authorized to deprive him of it when he should fail in his marital duties to his wife, and when the interests of the children justified their being placed in other custody.

But in our country the courts, especially courts of equity, have always had the power in their discretion, to vest the custody of children in either parent, or to take it away from both, having always the best interests of the children themselves chiefly in view. The tendency has always been, however, it must be admitted, to favor the paternal rather than the maternal claims, and this not only because of the strong, half-unconscious weight which long custom brings to bear on a judge's mind, but also because it is so generally the case that the money, property, income, means of support and education are in the father's possession rather than the mother's. When it is perfectly clear that the father is a bad man, whose influence over the children would naturally be bad, and that the mother's influence and character is good, then no court will hesitate to give their custody to the mother, with an order on the father to make her certain reasonable payments of money for their support. But even then every judge knows that there is a very considerable chance of the father's evading compliance with the order of the court by secretly taking himself and his property out of its

jurisdiction, when the children would be left dependent on their mother's unaided efforts. Of course this is much better for them than to be with a bad father, however plenty his money may be. But in cases where the evidence concerning the father's character is conflicting and doubtful, it is not so easy to decide; and where, added to this, there is evidence tending to throw doubt on the character of the mother also, it is often a very difficult matter for a conscientious magistrate, having always primarily in view the best good of the children, to make an order for their custody and support. If it were merely a question of the comparative rights of the father and the mother, the problem would be simpler; for then it would be only a weighing of the evidence for and against each, and an awarding of the children to him or her whose scale of errors tipped lightest and of merits heaviest.

I had two cases before the Probate Court recently, of applications by wives against their husbands for separate maintenance and custody of children, in which exactly this problem arose. In one of them my client made very damaging statements to me concerning her husband, who had deserted her, but she could produce very little evidence in support of her story. I told her that in such a case we should have to rely almost entirely on her own testimony and that of her two children; and I warned

her as strongly as words could do that if she herself had been guilty of any marital fault, or even imprudence, it would be almost certain to be proved against her, and she would lose her case. But she insisted strenuously on her own entire innocence in every particular, except the admitted weakness of "scolding," and on her husband's entire guilt in every respect wherein a husband could be false to his wife. Such inquiries as I was able to make did not throw any further light on the woman's character; and I was specially inclined to believe her story from the fact that her little girl of thirteen was devoted to her, and that the boy of seventeen was rather inclined towards her than towards his father. Well, the woman went on the stand and told her story. Then the opposing counsel took her in hand on cross-examination, and I was astounded to hear the admissions of her own guilt which he forced from her. I knew the case was lost long before she left the stand, but, resolved to make what fight was possible even in such a case, I went on to make out the worst character I could for the husband; but though the fair inferences from his own admissions were about equal to his wife's damaging testimony against herself, there was no ground, legal or moral, for giving that little girl to the care of such a mother, with money from the father for her support. Neither

ought such a father to have had her custody, even though he put her in the care of his sister, against whom no objection could be made. The legal custody should have been given to some reliable third person ; but to secure such an order a separate application for guardianship would have had to be made ; and there was no one who was willing to undertake the charge or apply for the appointment.

The other case,—hard fought for months, with several hearings and temporary orders,—was one in which I endeavored to get her children for a mother who was struggling to free herself from the habit of beer-drinking, which had been her ruin. Her husband had been guilty of such cruelty towards her as we sometimes read of but never believe. He had placed a heavy iron ring around her ankle, padlocked it to a chain fastened to a staple in the floor, and kept her two weeks in this condition, part of the time handcuffed, to prevent her, as he said, from getting beer. Even in such a case as this, when the poor woman admitted against herself the drinking habit and frequent intoxication, and when other worse evidence was also given against her, which may or may not have been true, is it any wonder that the judge would not give those little children to her with money for their and her support, and leave her to follow her own course of life ?

The tendency of modern decisions in many of our States, and a good deal of positive modern legislation, has been towards the equalization of the right of guardianship in both parents. In the States of Iowa, Kansas, Oregon, and in Washington Territory, the rights and responsibilities of the mother have been expressly made identical in every respect with those of the father, concerning the care, custody, support, and education of their minor children; so that with the equal right to their custody and to claim their wages, the mother is made equally responsible for their support out of her property, which was not the case at common law, the father only being thus liable. In several other States, statutes have given to the mother absolute right to the guardianship of her children on the death of their father, thus doing away with the heartless rule of the common law, which allowed a father to appoint a guardian for his children by his last will, who might take the custody of their persons from their mother, as well as the care of their property. In 1860 the legislature of New York enacted that "every married woman is hereby constituted and declared to be the joint guardian of her children with her husband, with equal powers, rights, and duties in regard to them with her husband," but a couple of years later this law was repealed. Divorce

courts in all our States have entire discretionary power concerning the custody of the children of parties to a decree, and such orders as they make in regard to the children may be changed at any time on cause shown by either parent; so that children over whom the court has thus gained control remain in a sense wards of the court.

Thus, though much remains to be done before this vexed and difficult question of the legal custody of children is satisfactorily settled,—if any settlement ever can be entirely satisfactory,—much has been accomplished certainly since the days of Blackstone, when the state of the law compelled him to write that “a mother, as such, is entitled to no power, but only to reverence and respect.”

## CHAPTER VI.

### CLAIMS OF WIDOW AND WIDOWER.

*"Until death us do part."*

THE provisions of the law concerning marriage do not cease with the termination of the marital relation by the death of one of the parties to it. The widow's right of dower and the widower's right of curtesy in the real estate of the deceased husband or wife have already been considered in an earlier chapter. There is also a distributive right which the survivor has in the personal property left by the deceased, which, however, differs very greatly in the various States of our country, and this will shortly be considered. But first comes the right to administer on the estate of the deceased husband or wife.

If there is a will, the executor or executrix will probably be named therein; but if there is no will, the court will appoint an administrator, whose duty it will be to take charge of all property that is left, to settle all lawful debts out of it, and then to divide it between the parties entitled to claim it by the laws of descent and distribution. It may be men-

tioned here that real property — that is, land with everything erected or growing upon the same — is divided according to the laws of descent in the State where it is located ; but in dividing all manner of personal property, the administrator is governed by the laws of distribution in the State which was the home of the deceased at the time of his death.

In each State there are laws which guide the court in the appointment of administrators. By common law, and in the majority of our States, the husband is entitled to administer on the estate of his deceased wife. Of course if the parties have been divorced he has no such claim, for he is no longer the husband ; and in some States there are provisions for the appointment of some other administrator if the parties have been separated by the husband's fault. In Massachusetts, the right of administration "shall in all cases be granted to her husband, if he is competent and willing to undertake the trust, unless the deceased has made some testamentary or other disposition of her estate which renders it necessary or proper to appoint some other person."

Laws in each State also regulate the matter of administration on the estate of a deceased husband. In England, and generally in this country, the widow is given the preference, if willing and competent; but she has not the same claim to appoint-

ment that a widower has. In Massachusetts, which is fairly representative of the law generally prevailing on the point, the rule is that administration "shall be granted to the widow of the deceased or his next of kin, or the widow jointly with the next of kin, as the Probate Court may deem fit." Thus it is left entirely in the discretion of the court, in each particular case, to appoint the widow, or to appoint the nearest relation of the deceased (according to certain rules of kindred which the law carefully establishes), or to appoint them both as joint administrators.

We come now to the subject of the share of widow and widower in the personal estate of the deceased. The common law gave to a widower all the personal property left by his wife at her death; and this rule has generally prevailed in this country until quite recently, when, in many States, statutes have been passed more nearly equalizing the rights of husband and wife in this respect. In Massachusetts the common law rule on the point was in force until 1882, when it was provided that the husband should only take one half of his deceased wife's personality if she left children or grandchildren, or if she disposed of the other half by her will; but if she left neither children nor will, then he should take the whole; and this is the law here now.

To a widow, the common law gave no share whatever in her deceased husband's personality ; but by a statute passed during the reign of Charles II., she was given one third of the personal property left by her husband, if he died without a will ; or if there were no children or grandchildren, one half, the other half going to his kindred, or in default of kindred, to the crown. This law also was very generally adopted in this country, but within the last few years many changes have been made in various States. In Massachusetts, the wife still takes but a third if the husband leaves children or grandchildren ; but if there are none, she takes the whole up to the value of five thousand dollars ; the next five thousand, or any portion thereof, goes to the husband's kindred ; and if there is personal property above the value of ten thousand dollars, half of this residue goes to the widow and half to the husband's relations. If he leaves no kindred, the widow takes all the personality ; and this rule in the absence of kindred generally prevails throughout the country. It may also be mentioned in this connection that in Massachusetts if the husband leaves a will, the widow may, at any time within six months after its probate, waive the provisions, if any, which it contains for her benefit, and claim instead such a portion of his estate, both real and personal, as she would have been entitled

to if he had died without a will ; but if she would thus become entitled to personal property of greater value than ten thousand dollars, she can receive, above that amount, only the income during her life of the excess of her share of such estate over ten thousand dollars.

By carefully considering these provisions it will be seen that in some cases the Massachusetts law gives an advantage to the widower and in others to the widow. Thus, if the amount of personality left by a childless husband or wife be five thousand dollars, the widow may take the whole sum, despite her husband's will to the contrary ; whereas the widower, if the case be reversed, can take but twenty-five hundred dollars, the other half going according to the will of the deceased wife. If the amount be between ten thousand and twenty thousand dollars, either survivor would take an equal amount,—namely, one half the entire sum. But if the amount be over twenty thousand dollars, the advantage is in favor of the husband. Thus if it be thirty thousand dollars, the widower would take fifteen thousand out-right, while the widow would take ten thousand out-right and the income for life of five thousand. If a child be left, the advantage is also with the widower, who takes one half his deceased wife's personality ; while the widow in like case takes only one third. So, too, where there are

no children and no will ; the widower takes all his deceased wife's personality, whatever its value, while the widow shares equally with the kindred of her deceased husband, if his personality exceeds five thousand dollars in value.

The common law very considerably compelled the husband to defray all necessary funeral expenses of his deceased wife, on the ground that it was for his own personal benefit so to do. And it also held a widow similarly bound to bury her husband, if he left no estate, "as a benefit and comfort to herself." But in Massachusetts it was recently decided, in the case of *Constantinides v. Walsh, Executor*, that a husband who has paid the funeral expenses of his wife who has left property, may recover them of her executor. So although a husband is bound to provide his wife with necessities of life according to his means and position, no matter how much property she may have in her own right, he is not obliged to bury her when she is dead, this not being regarded as necessary !

At common law a married woman could not make a valid will. Not only so, but if a woman made her will before marriage, the marriage when it did occur entirely revoked the will and made it valueless. This latter rule still prevails quite generally in this country ; but the former one has been changed so that almost everywhere now a married woman may

make a will under more or less restrictions. If her husband assents in writing to her will of her personal estate, that will is everywhere good. In some States, she may make a will both of realty and personality without assent from him, which will be valid to convey all her property ; in others the husband's right of courtesy still remains on her real property, despite her will, just as her claim of dower remains on his. In Massachusetts, the law concerning married women's wills, after many changes from time to time, stands now as follows : "A married woman may make a will in the same manner and with the same effect as if she were sole [that is, unmarried], except that such will shall not, without the husband's written consent, operate to deprive him of his tenancy by the courtesy in her real estate, or of the right to the use of one half of such real estate for his life, if they have had no issue born alive [for in such case no courtesy attaches, and the one half interest was given by statute in lieu thereof], or of more than one half of her personal estate, or of her real estate not exceeding five thousand dollars in value where no issue survives her." So that the power of a wife to make a will in this State without her husband's consent practically amounts to just this : that she may dispose of half her personal property ; and if she leave a child or grandchild alive at her death,

she may dispose of all her real property, subject, however, to her husband's right to enjoy its entire income during his life; but if there be no child or grandchild living at her death, her husband may claim her realty up to the value of five thousand dollars, despite any provision of her will, and may also have the income for his life of all the surplus above five thousand dollars in value if a child had been born alive to them during the marriage, or of one half such surplus if no child had been born; and in any case he takes one half of her personality.

It must be remembered in this connection that a widow has the same right, if her husband die leaving no child or grandchild, to take his real estate up to the value of five thousand dollars, and the income of half the surplus for her life, notwithstanding any attempt that he may make by his will to dispose of his property otherwise. Thus the tendency of modern legislation is to equalize the claims of husband and wife on each other's estate, and in several States this has been entirely accomplished, as will be seen by reference to the Abstracts of Statutes in the latter part of the book.

## CHAPTER VII.

### DIVORCE.

*"Those whom God hath joined together let no man put asunder."*

If it could be assumed that all men and women who are bound in matrimony were joined by God, then the doctrine of the Roman Church forbidding divorce would deserve serious consideration; but to throw upon the kind Father the responsibility for all the misery of His unhappy mismated children seems scarcely reverent or just. But without going into the arguments for or against divorce, I will give as briefly as may be the law on the subject as it now exists in this country.

Until very recently divorce could not be obtained in England save by the expensive method of an act of Parliament, and then only for adultery, and not to the wife even on this ground, unless by proving other special facts in addition, such as incest or bigamy, extreme cruelty, or desertion for two years, which it was seldom possible to do. And these same distinctions between the respective rights of husband and wife to sue for divorce still prevail in England, since divorce jurisdiction was

given to the courts. In Canada a woman cannot obtain a divorce from her husband, although she prove him guilty of infidelity, unless he has actually established his mistress in the same house with his wife, or unless he has so conducted himself in the matter as specially to disgrace her; and this latter provision is so construed as to practically prevent a woman from obtaining a divorce in the courts at all. Only last year, a lady who had been married from one of the best families of Massachusetts to a Montreal man sought a separation — not an absolute divorce — in the Canadian courts, proving him guilty of pronounced infidelity, and it was refused her. Fearing constantly lest her children should be taken from her by the man who had shown the photograph of his young daughter just blooming into womanhood to the inmates of a disreputable house, and who, so far from contributing towards their support, had squandered the larger part of their mother's fortune, this woman appealed in desperation to Parliament, and after a long, hard fight, which cost her about three thousand dollars for attorneys' fees alone, she did secure a divorce and the custody of her children.

In our country there are but few States where any distinction is made between husband and wife in respect to the causes which may be ground for divorce. In North Carolina a divorce may be

given the husband for any act of adultery proven against the wife, but to the wife a decree will not be given unless her husband separates from her and lives in adulterous relations with another. In Texas the law is similar. In Maryland there is a strange provision giving divorce to a husband who proves his wife to have been guilty of any act of illicit intercourse before marriage, but no corresponding right is given to the wife. In many States, especially Southern, divorce is given to the husband if he proves his wife to have been pregnant by another at the time of marriage and unknown to himself; but only in one State, Iowa, is it provided that a husband who had an illegitimate child living at the time of the marriage, unknown to the wife, cannot avail himself of this charge to obtain a divorce from her. Kentucky gives divorce to a husband who proves his wife to be guilty of such lewd behavior as shows her to be unchaste, but gives no corresponding cause for divorce to the wife. Both Virginia and West Virginia give divorce to a husband who proves his wife to have been notoriously a prostitute prior to the marriage and unknown to him; but only West Virginia gives divorce to a wife who proves her husband to have been notoriously a licentious person prior to the marriage and unknown to her. In South Carolina no divorce has ever been allowed for any cause.

The causes most generally prevailing as ground for divorce are adultery, cruelty, and desertion. Next in importance are drunkenness, imprisonment, and impotence, there being very few States that do not include these in the statute regulating divorces. The last cause is rarely assigned, however. In many States non-support by the husband is ground for divorce in favor of the wife ; but, as she is usually obliged to prove that she actually suffers for lack of the necessaries of life as the result of her husband's failure to provide them, that she does not receive them from any source, by her own labor or otherwise, and that he is amply able to support her and wilfully refuses to do so, this remedy is practically of little value and is seldom relied on independently of other causes.

We often hear the complaint that divorce is easily obtained in this country on very slight and trivial pretexts, and the statement is made that the marriage bond may be dissolved on the ground of "incompatibility of temper." No such cause for divorce exists in any State, either by this name or any other, nor is it now left to the discretion of the court to grant absolute divorce for causes not specifically named in the statute, unless in Rhode Island, and possibly one or two other States. In each State the grounds for divorce are distinctly set forth in the statutes on the subject, and there is not one

anywhere named which can justly be called trivial or unimportant,—though of course it is extremely desirable that all divorce laws should be made uniform throughout the country. The danger to society that divorce may be too easily obtained is seldom through laxity of the statute laws regulating it, but through laxity in the execution of these laws in the courts. In different parts of the country very different methods and opinions prevail on the subject; and while some judges are very strict, others are liberal to the verge of carelessness.

The five causes most commonly urged may be briefly considered. As to imprisonment, the provisions in the various States differ very greatly; in some imprisonment for life being necessary to give divorce, in others imprisonment for certain stated terms, for certain classes of offences, or in certain places of confinement. In Massachusetts divorce may be had if the other party is sentenced to confinement at hard labor for five years in State-prison, jail, or house of correction.

Drunkenness, or habitual intemperance, to be a cause for divorce, must in most States have continued a specified number of years; and generally, also, the habit must have been contracted after marriage. If a woman knowingly marries a man who has already contracted habits of intoxication, whether in the hope of reforming him or expecting

to endure the results which may arise from such tendency, she cannot afterward go into court to claim a divorce on account of this state of affairs, into which she has entered with her eyes open.

Cruelty and drunkenness are causes very frequently alleged together, though either one may be sufficient by itself to give a divorce. The cruelty necessary to be proved may be such violent conduct as to endanger life, limb, or health, or to create a reasonable fear of such danger; or conduct which results in such mental torture that its natural and direct effect is to injure or endanger the physical health.

Desertion is of two kinds, the voluntary separation by one party from the other, and the voluntary refusal by one party to return to the other upon request, when the party so requesting is not in fault. Thus if a husband compels his wife to leave his home by driving her forth, he, and not she, is guilty of desertion. But if, shortly afterward, he repents, and asks her to return, and if she can assign no good reason for believing that his repentance is not genuine, or that he will ill-treat her in the future, she must return, else she may herself be charged with desertion. If the husband leaves the wife temporarily, to be absent on business or for pleasure, without the intent of abandoning her, it is not desertion; but if he fails to return, it may be-

come so, especially if she requests him to return and he does not. The fact that she continues to reside in his house, supported by his money, does not affect the case, the desertion consisting in his refusal to live with her. If, however, he goes elsewhere to live and sends for her to join him, her refusal to go is desertion on her part; for to the husband is given by law the right to choose the matrimonial domicile, and the wife must abide by his choice unless she can prove that serious danger would thereby ensue to her health. If the separation be caused by such ill-treatment on the part of one that the other is obliged to leave, the charge of desertion may be added to other charges against the former, who in such case is the party intending a separation, rather than the party who leaves. But if the separation be by mutual consent, neither party can charge desertion; for neither can prove that he or she desired to continue the marriage relation and would have done so but for the refusal of the other. The length of time during which desertion must continue, to be cause for divorce, is fixed in most States by statute.

Adultery is everywhere ground for divorce in this country, except as already stated. In New York this is the only cause for which absolute divorce is given. A legal separation may be had for other causes; but this is not a real divorce, and

does not permit of subsequent marriage. It is called divorce "from bed and board," and is merely a judicial decree authorizing the parties to live apart until a reconciliation may be effected.

In some States certain causes may give an absolute divorce, certain others a separation merely. In some cases, too, a decree of nullity may be had, declaring the marriage itself to have been void from the beginning. Another method of divorce, that now prevails in Massachusetts, is by a "decree nisi;" that is, a decree of immediate separation, to be followed by absolute divorce at a later date, in case matrimonial relations are not resumed meantime. If the parties choose to return to each other during this probationary period, they may do so without any form or ceremony; but after the final decree of absolute divorce is given, they cannot come together again without being re-married. During this period, also, any one whose interests will be affected by the divorce, the parties themselves, children or others, may come forward, and by showing good cause, object to the final decree being given. In Massachusetts all decrees now are nisi, not to be made absolute till the expiration of six months.

Divorce can in no instance be secured by mutual agreement to that effect, or by mere default. The party applying for a decree must prove his or her

case, whether any defence is made or not, though the amount of proof required in uncontested cases differs in different States. On the contrary, if it appears that there has been collusion,—that is, that the parties have agreed on a separation, or that the defendant is in any way aiding to bring it about,—no divorce will anywhere be given. So if there is connivance,—that is, if the complaining party has in any way consented to or winked at the wrong-doing of which complaint is made,—no divorce can be obtained.

Condonation is another defence, which will absolutely prevent a divorce from being given for a wrong which has once been forgiven. Thus, if a wife learns with any fair degree of certainty that her husband has wronged her, by infidelity or otherwise, and continues to live with him, it is considered that she forgives him ; and she cannot afterwards make it cause for divorce, no matter how grievous the wrong may be. In such case, a party should not delay a single day, if he or she intends to apply for a divorce, but should leave the other at once, and institute legal proceedings. Mere suspicion of a wrong is not, however, sufficient ground to justify a separation, and there may be delay until reasonable proof is obtained.

Recrimination is a defence often urged where the defendant cannot disprove the charges made

against him ; it being sufficient, in most if not all our States, to show that the plaintiff has also been guilty of a similar fault, in which case no divorce will be given.

In order to apply for a divorce, the applicant must be a citizen of the State wherein application is made, and must have resided there a certain length of time, which is fixed in each State by statute, differing very greatly in different parts of the country. In some States and Territories of the far West, six months' residence is sufficient to give the court divorce jurisdiction ; while in Massachusetts it must be five years. For no other purpose is a wife's domicile ever considered to be different from that of her husband ; but in order to apply for a divorce, she may acquire a new domicile apart from his. The worst result of the great differences between divorce laws prevailing in different States is that a citizen of one State, who wishes to take advantage of the more elastic laws of another State, may go there, take up a temporary residence for six months or a year, as the case may be, and calling himself a citizen, obtain a divorce, and then return to his real home. But a decree thus obtained is in fraud of the laws of both States, and is not valid ; and if he marries again, his marriage is not legal, and may be set aside by showing such facts as will prove a fraudulent intent. The main

difficulty in the way of such proof, however, is that one has a perfect right to change his domicile at any time and as often as he chooses, and to avail himself of any laws in the place which at the time is his domicile. But to acquire a domicile, a person must not only live in the place, or be on his way to live there, but it must be his genuine intention to remain there permanently — an intention, however, which he may change at any later time, if he sees fit. It is, therefore, only possible to prove his lack of intention to remain in the place where he procures a divorce, by his acts, words, admissions, or otherwise, and this is generally difficult, though sometimes easy. Too much attention cannot be paid to this point; for many broken homes and legal complications over rights to property have arisen, and many more will arise in the future, from these invalid divorces and void marriages based on fraudulent domiciles.

Alimony, usually more or less in the discretion of the court as to amount, may be given to the wife who obtains a divorce from her husband. He may also be ordered to pay his wife's court expenses, whether she be plaintiff or defendant. The custody of children may be given to either party, or in case of necessity taken from both parents and given to the care of a guardian, entirely in the discretion of the court, which must, however, take into

consideration all the circumstances of the case, and make such disposition of children as seems for their own best good, this being the criterion rather than the wishes or claims of the parents. The children are usually given to the parent who is innocent, and very young children may possibly be given to the mother whether she be innocent or guilty, but consideration is also had to the ability of the parent to maintain the children. This subject has already been considered at some length in an earlier chapter, the law concerning the custody of children being practically the same; whether on divorce or separation without divorce. When it appears desirable that the children be given to the custody of the mother, and the father has means which could be applied to their support, the court may order him to make certain payments to the wife for their maintenance, whether alimony is given her for her own support or not. The decree of the court concerning the children of divorced parents is always liable to be opened up and reconsidered; and a new decree may be obtained at any time if it be shown to be necessary for the good of the children themselves.

## ABSTRACTS OF STATUTES

### IN ALL THE STATES AND TERRITORIES CONCERNING THE LAW OF HUSBAND AND WIFE.

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#### ALABAMA.

##### WIFE'S LEGAL STATUS.

THE law concerning married women was radically changed by an act passed in 1887. As it stands now, all property of any kind owned by a woman at marriage, or which comes to her after marriage in any way, constitutes her separate estate. She may dispose of it by will, but not by deed or other conveyance, unless her husband is insane, or has abandoned her, or is non-resident in the State, or is imprisoned for a term of more than two years, in any of which cases she may convey her property alone. Her separate estate is liable on claims for family necessaries, but not for her husband's debts. A husband is not liable for his wife's debts contracted before marriage, or after marriage if he consented in writing to her contracting such debts, in which case she and her property only are liable. Her earnings and damages for personal injuries belong to her. She may sue and be sued alone. She can enter into business or trade relations in her own name if she files her husband's written consent in the Probate Court in the county of their residence; but if he is insane, non-resident, or has abandoned her, his consent is not necessary. Husband and wife may contract directly

with each other, but subject to the usual rules of law that govern persons in confidential relations. But the wife cannot become her husband's surety, either directly or indirectly. A woman's marriage revokes her will previously made. Women are of age at twenty-one, but may marry without parents' consent and may make a will of personal property at eighteen.

#### CLAIMS ON PROPERTY.

A widower takes one half his deceased wife's personal property; also the use for his life of her real estate, unless the Chancery Court decrees otherwise.

If a widow has no separate estate of her own, she takes dower in all lands of which her husband died possessed, also in all held in trust for him. If he leaves issue or dies insolvent, her dower attaches to one third of his lands for her life; otherwise, to one half. Of his personal property she takes one half if he dies without issue, or leaving only one child or descendants of only one; if more than one and not more than four, she shares equally with the children; and if more than four, she takes one fifth of his personality. If he leaves no relatives, she takes it all. But if a widow has a separate estate of her own equal to her share in her husband's property, she takes nothing. If she has an estate of less value, she takes enough from her share in his estate to equal the amount which would have come to her if she had had no estate of her own.

#### DIVORCE.

Causes for divorce are adultery; impotency; voluntary abandonment from bed and board for two years; imprisonment for two years in penitentiary, sentence being for seven years or longer; crime against nature, whether committed

before or after marriage. In favor of the husband, for pregnancy of the wife at time of marriage without his knowledge or agency. In favor of wife, for habitual drunkenness of husband, if the habit did not exist at time of marriage to wife's knowledge, and for actual violence committed upon her by the husband with danger to life or health, or where there is reasonable apprehension of such violence. The custody of children may be given to either parent, and an allowance for the maintenance of the wife may be given her out of his estate if her own estate is insufficient.

## ARIZONA TERRITORY.

### WIFE'S LEGAL STATUS.

THE community system prevails. All property of any kind owned by either husband or wife at marriage, or acquired during the marriage by gift, by will, or by inheritance, and all income thereof, constitutes the separate estate of husband or wife, free from the debts of the other; and the wife has exclusive control of her property, which she may dispose of in any way as if unmarried. Property acquired by either after marriage in any way, except by gift, devise, or descent, constitutes the community property of both; but during the marriage the husband only can dispose of it. It is liable for community, or family, debts. Married women may carry on business or trade in their own right, but they must give a formal notice to the public that the business is theirs, as required by a statute on the subject. They may sue and be sued concerning their separate estate. They cannot act as administratrix, but may be executrix if so named in a will. A married woman's property must be inventoried and re-

corded to secure it to her. Any minor attains his or her majority for business purposes by marriage.

#### CLAIMS ON PROPERTY.

There is no courtesy or dower, unless dower was restored by the act of Congress dated March 3, 1887, whereby it was enacted that a widow shall have the right of dower in all the Territories of the United States. If no issue survives, the widow or widower takes all the community property; otherwise, half of it. A homestead and certain other property, not exceeding five thousand dollars in value, may be set apart for the widow. If the deceased left no will, but left issue, the widow or widower takes one third of the personal property of the separate estate of the deceased, and one third for life of the real property; but if no issue survives, the widow or widower takes one half of the real property absolutely, and all of the personality; and if the deceased left no father nor mother, then the widow or widower takes the whole of the estate.

#### DIVORCE.

Causes for divorce are adultery; extreme cruelty by personal violence or other means; voluntary abandonment for six months; conviction of a felony and imprisonment. Also in favor of the wife, for the habitual intemperance of her husband, or his wilful neglect to provide her with the comforts and necessaries of life for six months, having ability to provide the same, or failing to so provide for her by reason of his idleness, profligacy, or dissipation. The plaintiff must have resided six months in the Territory. Marriages may be pronounced void for impotence, or any other impediment that renders the contract invalid from the beginning.

## ARKANSAS.

### WIFE'S LEGAL STATUS.

ALL property, real and personal, belonging to a wife at marriage, or coming to her after marriage in any way, including her earnings, constitutes her separate estate, free from her husband's debts or control. She may dispose of it by sale or by deed as if she were unmarried; but in order to hold it as her own without special proof of ownership, she must make a schedule of such property and record it, in accordance with certain statutory requirements. She may make a will of all her property, except that she cannot deprive her husband of his courtesy. Her property is liable for such debts as she contracts with special reference to it. She may trade alone, and may make contracts and sue and be sued concerning that trade or business, and concerning her separate estate. She cannot act as executrix or administratrix. The marriage of a woman revokes her will previously made. Women are of age at eighteen.

### CLAIMS ON PROPERTY.

Common law courtesy prevails. Also common law dower in one third of the husband's realty, with one third of his personality absolutely, if there is surviving issue; if none, then the widow takes one half his personality and one half his realty for her life, instead of one third.

### DIVORCE.

Causes for divorce are adultery; bigamy; impotency; wilful desertion for one year without reasonable cause; conviction of felony or other infamous crime; habitual drunk-

enness for one year; cruel and barbarous treatment endangering life; such personal indignities as render the condition of the applicant intolerable; permanent or incurable insanity, occurring subsequent to marriage. The plaintiff must have resided in the State one year. The cause of divorce must have occurred in the State; or, if out of the State, it must have been a legal cause of divorce where it did occur, or the plaintiff's residence must have been at that time in the State where it occurred; and in any case the cause must have occurred within five years' time prior to the suit. Alimony and attorney's fees may be given to the wife.

## CALIFORNIA.

### WIFE'S LEGAL STATUS.

THE community system prevails in this State. All property owned at marriage by either husband or wife, together with all acquired by either during the marriage, by gift, inheritance, or through the will of any deceased person, constitutes the separate property of each. All acquired by either during the marriage in any other way is the common property of both, over which the husband has the exclusive management and control, except that he cannot so dispose of it as to deprive his wife of her interest in one half the proceeds; and if he attempts to do so, she may maintain suit against him for its recovery. Husband and wife may contract directly with each other, and may sue each other for breach of such contracts, which, however, are governed by the rules of law that always control parties who stand in confidential relations to each other. A wife may make contracts of all kinds concerning and binding upon her separate

estate, and she may convey and dispose of it in any way as if unmarried ; but a conveyance by a married woman must be acknowledged by her, which in the case of deeds given by other persons is not imperative. The separate estate of each is liable for his or her debts contracted before or after marriage, but not for those of the other party. The community property is liable for the wife's debts contracted before marriage if she has no separate estate, but not for her debts after marriage unless her husband pledges or mortgages it in security therefor. Her earnings are community property, but are not liable for her husband's debts; if living apart from him, they are her separate property. She may trade or transact business as if unmarried, after first obtaining leave of court. She may act as executrix, but not as administratrix. She may dispose of her property by her will without her husband's assent. Her will made before marriage is revoked thereby. Both community and separate property of each may be subjected to the support and education of their children, the court fixing the proportions in which the different funds shall be applied. The child's custody, services, and earnings belong to the father; but he cannot appoint another guardian in his place without the mother's written consent, unless she has deserted him or they are living apart by agreement. Women are of full age at eighteen for all purposes.

#### CLAIMS ON PROPERTY.

There is no curtesy or dower. A widower takes all the community property; a widow takes one half of it. The separate property of husband and wife may be all disposed of by his or her will; but if there is no will, and deceased leaves no issue, or only one child or descendants of only one, then the surviving widow or widower takes half the separate

estate absolutely, both real and personal; and if no issue, parent, brother, or sister is left, then the widow or widower takes it all. If more than one child or descendants of more than one be left, one third goes to the widow or widower.

#### DIVORCE.

Causes for divorce are adultery; extreme cruelty; wilful desertion or wilful neglect for one year; habitual intemperance for one year; conviction of felony. Also, a marriage may be annulled for bigamy; impotency or unsound mind at time of marriage; for want of legal consent to the marriage; and for consent obtained by fraud or force. The plaintiff must have resided six months in the State. Alimony and costs of suit may be given to the wife, and the court may enforce such order against the husband by imprisonment. The community property is equally divided between the parties, unless the divorce be for extreme cruelty or adultery, when the court may apportion it as seems just. Custody of children may be given to either parent.

A deserted wife may bring an action against her husband for the separate maintenance of herself and children without divorce, if she prefer to do so.

#### COLORADO.

##### WIFE'S LEGAL STATUS.

ALL property belonging to a woman at her marriage and all that she acquires afterwards by inheritance, by the will of any deceased person, by the gift of any one except her husband, or by the proceeds of her business or labor, constitutes her separate estate, which she can hold, manage, con-

tract in regard to, and sell and convey, as though she were unmarried, and without her husband's consent. Her deed of her realty will convey it without her husband's signature. She may dispose of half her property by will without her husband's consent, or all of it with his consent. Her property is not liable for his debts; nor is he liable for her ante-nuptial debts, except to the extent of any property which he may have received from her. Husband and wife may make all manner of contracts directly with each other, and convey property to each other. She may become surety for him. She may carry on any trade or business, and sue and be sued as if single, and her property is liable on judgments obtained against her. A woman is of age at eighteen for all purposes.

#### CLAIMS ON PROPERTY.

There is no courtesy or dower. Neither husband nor wife can so dispose of his or her property, real or personal, by will, as to deprive the surviving widow or widower of more than one half thereof, except that the wife may dispose of all her property if the husband gives his written consent. The widow may choose whether she will take the provision made for her by her husband's will or take one half his property. If there is no will, but the deceased leaves issue, the surviving husband or wife takes one half the estate; but if there is no issue and no will, then the survivor takes the whole.

#### DIVORCE.

Causes for divorce are adultery; bigamy; impotency; wilful desertion for one year without reasonable cause; wilful desertion and departure from the State without intention of returning; habitual drunkenness for one year; conviction of

felony or other infamous crime; extreme cruelty; failure of husband for the space of one year, being in good bodily health, to make a reasonable provision for the support of his family. Plaintiff must have resided one year in this State before bringing suit, unless the offence was committed in this State, or was committed while one or both of the parties resided in this State.

## CONNECTICUT.

### WIFE'S LEGAL STATUS.

Two entirely different and distinct codes of law obtain in this State concerning married women and the relative claims of husband and wife. One applies to marriages which took place before April 20, 1877, which may be called the old law; the other to all which have taken place since that date, and to those cases where husband and wife, though married earlier, have by a written contract recorded in the Probate Court and in the town clerk's office, accepted the provisions of the new law, as any couple may do who wish to avail themselves thereof.

By the old law, the husband has a right to the use of his wife's real estate during her life, and courtesy in it after her death; but it cannot be taken for his debts during the life of the wife or of a child of the marriage. The profits, rents and income of all her property, real and personal, are his during the marriage, but cannot be taken for his debts, unless they are contracted for the support of his wife and children. If she purchases real estate during the marriage with the proceeds of her personal labor or services, this property, together with all her personal property, constitutes her

separate estate, but her husband is her trustee (unless another trustee is appointed) to care for this separate estate, which is subject to claims for the support of herself and children, but not for any other debts incurred by him; and he cannot sell or dispose of it unless she joins in the sale or conveyance. If he abandons her, he loses all claim to her property or income, and the wife may transact business, and sue and be sued as if unmarried; and if the abandonment continues for three years, she may obtain leave of the Superior Court to convey her real estate without her husband's signature. She may make contracts in her own name, buy goods and give her promissory note in payment, and if these contracts and purchases are for the benefit of her family or estate, they will bind her separate estate, real and personal; otherwise they will not.

The new law gives to husband and wife no interest in the property of each other, whether acquired before or after marriage, except on the death of one of the parties, as will be stated later. The property of neither is liable for the debts of the other, but that of both is liable for purchases made by either for the joint benefit of both or of the family, or for the wife's reasonable apparel, or for her support while abandoned by her husband; but his property must first be applied to the satisfaction of these claims, and if she is compelled to pay them while the husband has property, she may sue him in the Court of Equity to recover the amount so paid by her. The wife's separate estate includes all property, real and personal, owned by her at marriage or acquired later in any way whatever, including her earnings; and she may make all contracts relating thereto, sue and be sued concerning it, and convey her real estate alone, as if unmarried.

## CLAIMS ON PROPERTY. .

By the old law, the widower has courtesy in all his wife's real estate, whether held by her in possession, or held in trust for her. But the wife has dower only in such real estate as her husband dies possessed of. The widow of a man who dies without a will, is given one third of his personal property, or if no issue survives, one half of it. But the estate of any man who dies without issue is always liable for his widow's support during widowhood, if she be poor and there be no person bound to support her who is of sufficient ability so to do, and all persons to whom the estate descends or to whom it is given by the husband's will, are liable for contribution, *pro rata*, towards her support.

By the new law (except in cases where either party has received from the other, by a written contract made before or after marriage, a provision intended to be in lieu of the share given by the statute and except in cases where abandonment without sufficient cause has occurred and continued till the death of the deceased), the surviving husband or wife is entitled to the use for his or her life of one third in value of all property, real and personal, owned by the deceased at his or her death, subject first to the payment of one third of the debts due from the estate. This one third interest cannot be taken from the survivor by the will of the deceased. If there is no will, then this one third is given absolutely instead of for life; and if no issue survives, then one half absolutely, instead of one third. If there is a will which makes a provision for the survivor, he or she may elect whether to take this provision or the one third life interest, but cannot take both unless the will clearly shows such an intent.

**DIVORCE.**

Causes for divorce are adultery; fraud in the marriage contract; wilful desertion and total neglect for three years; seven years' absence, unheard from; intolerable cruelty; habitual intemperance; imprisonment for life; any infamous crime involving a violation of conjugal duty and punishable by imprisonment in the State-prison. Plaintiff must have resided three years in the State, unless the parties had resided here together while married, or unless the cause has arisen since the plaintiff lived here, or unless the defendant has resided here three years next prior to the petition. A reasonable part, not exceeding one third of her husband's estate may be given to a woman at divorce, and custody of children may be given to either parent in the discretion of the court.

**DAKOTA.****WIFE'S LEGAL STATUS.**

A RECENT statute in Dakota declares that a married woman shall retain the same legal existence after marriage as before, and shall receive the same protection of all her rights as a woman which her husband does as a man, and shall have the same right to appeal alone to the court for redress or protection for any injury to her reputation, person, property, or character.

A wife may own in her own right, property of all kinds acquired by her at any time and in any way, as though unmarried. She may sell and convey it or dispose of it by will; and she may make contracts of all kinds, sue and be sued on them, give promissory notes, and enter into trade or business as if unmarried. Husband and wife may contract

directly with each other and enter into business relations with each other or with any one else, but subject to the usual rules of law governing the transactions of persons who stand in confidential relations. Neither has any interest in the property of the other during the life of both, but neither can be excluded from the other's dwelling. Neither is responsible for the other's debts, whether contracted before or after marriage, but each for his and her own; but a husband's property, and his only, is liable for his wife's debts for necessities for herself and family, contracted as his agent. A wife's earnings cannot be taken for her husband's debts; and if she is living apart from her husband, her earnings and those of their minor children in her custody are her separate property. She may be executrix of a will, but not administratrix of an estate. She may dispose of all her property by her will, without her husband's signature. A woman's marriage revokes her will made previously. Women are of age at eighteen for all purposes.

#### CLAIMS ON PROPERTY.

There is no courtesy or dower, unless dower was restored by the act of Congress of March 3, 1887, whereby it was enacted that a widow shall have the right of dower in all the Territories of the United States. Whether dower will prevail in future, will doubtless be settled by the legislatures of the new States of North and South Dakota. If a husband or wife die without a will, the survivor takes one half of all the property of the deceased, if there is no issue, or if there is but one child or descendants of one child; if more than one, then the widow or widower takes one third. If no descendants, parents, brothers, or sisters survive, then the widow or widower takes the entire estate. If the husband or wife

die leaving a will, the widow or widower can only take, as against the will, the homestead, if any, for his or her life, and such personal property as is by law exempt from being taken on execution. The homestead, which may belong to husband or wife, may be of one acre in extent if within a town plat, or one hundred and sixty acres with buildings thereon, if not in a town plat; and it is not limited in value. The exemption of personal property is very liberal, amounting to fifteen hundred dollars' worth of furniture, merchandise, money, or other property, besides one hundred dollars' worth of books, all clothing of the family, and certain other specified articles.

#### DIVORCE.

Causes for divorce are adultery; extreme cruelty; conviction for felony; wilful desertion or wilful neglect for one year; habitual intemperance for one year. The plaintiff must have been a resident in good faith of Dakota for ninety days next preceding the commencement of the action. If an unreasonable lapse of time has occurred between the cause which is assigned and the commencement of the action, no divorce will be given. The court may decree that the husband shall provide for the maintenance of the wife and children, and may give the custody of the children to either parent in its discretion, and may assign the homestead to the innocent party.

A marriage may be annulled for any of the following causes existing at the time of the marriage: bigamy; unsound mind; fraud, force, or physical incapacity; and where the petitioner was under the age of consent (eighteen for males and fifteen for females), and the marriage was not sanctioned by the consent of parents or guardian.

## DELAWARE.

### WIFE'S LEGAL STATUS.

BEFORE April 9, 1873, a woman's personal property and the profits of her real estate went to her husband at marriage. In marriages that have taken place subsequently to that date, all property, real and personal, belonging to the woman at marriage constitutes her separate estate, together with all that comes to her after the marriage from any person other than her husband; and any wife, whenever married, may hold as her separate estate whatever property has actually come into her separate possession in any way except from her husband since the above date, and all that may come to her in the future. Her property shall not be liable for his debts nor under his control; but it is liable for her own debts, whether contracted before or after marriage. She may claim her earnings, and may contract and sue and be sued relative to her earnings and her separate estate, and may give a good bond with or without a power of attorney, but can probably bind herself by no other contracts; but it has not been judicially determined whether her promissory note will bind her, or whether she can transact business like a single woman. She cannot convey her real estate unless her husband joins in the deed. She may make a will of all her property, real and personal, and may act as executrix or administratrix.

### CLAIMS ON PROPERTY.

Common law courtesy and dower both prevail in this State; but if the husband leaves no issue, the widow takes her life interest in one half his real estate instead of one third; and if no child was born during the marriage, so that the

widower cannot take courtesy in his wife's estate, he takes a life interest in one half her estate instead of the whole; but her debts must in this case be first settled out of the estate.

If there is personal property, the widower takes all that his wife leaves, if she has not disposed of it by her will; and the widow takes one third of her husband's personality when he dies without a will but leaving issue, and one half of it if there is no issue; the whole, if he leaves no kindred.

#### DIVORCE.

Causes for absolute divorce are adultery; desertion for three years; habitual drunkenness; impotency; extreme cruelty; conviction for felony after marriage. Divorce absolute or divorce from bed and board, at the discretion of the court, may be given for procurement of marriage by fraud; lack of sufficient age of either party at time of marriage (eighteen for males and sixteen for females); where the marriage has not been voluntarily ratified after both parties have attained the legal age; or for wilful neglect of husband for three years to provide his wife with necessaries of life suitable to her condition.

If an inhabitant of this State goes into another State to obtain a divorce for a cause occurring here, or for a cause which would not be sufficient to justify a divorce under the laws here, such a divorce shall be of no force in this State.

The court may give the wife alimony; and if the husband is in fault, all the wife's real estate is restored to her, and she may be allowed a reasonable share out of her husband's property, real and personal; and if the wife is in fault, the whole or part of her real estate may be restored to her, and the court may, in its discretion, also give her a reasonable share of her husband's personal property.

**DISTRICT OF COLUMBIA.****WIFE'S LEGAL STATUS.**

ALL property, real and personal, belonging to a woman at marriage, or coming to her afterward in any way except by gift or conveyance from her husband, constitutes her separate property, of which she has the same control in every way as if she were single, free from her husband's control or debts. She may make a will, and convey her realty without her husband's consent or signature, except as regards realty acquired by her previous to April 10, 1869. She may bind herself and property by her contracts, and may sue and be sued as if unmarried. But her earnings still belong to her husband, though if he gives them to her, or agrees that they shall be hers, they are then protected from his subsequent creditors. A woman may make a will of real and personal property at the age of eighteen years. Marriage revokes a will previously made.

**CLAIMS ON PROPERTY.**

Common law dower prevails. Also courtesy in lands acquired by the wife before April 10, 1869, but probably not in lands acquired since that date. If a husband dies without a will, but leaving issue, his widow takes one third of his personal property; if he leaves no issue, but leaves a parent, brother or sister, nephew or niece, the widow takes one half; if no such kindred, the widow takes it all. If either husband or wife dies without a will and without kindred, the widow or widower takes all real property belonging to the deceased; or if dead, then it goes to the kindred of the previously deceased husband or wife.

**DIVORCE.**

Causes for absolute divorce are adultery; bigamy; lunacy or impotency at time of marriage. Divorce absolute or from bed and board, at the discretion of the court, may be granted for cruelty endangering life or health; reasonable apprehension of bodily harm; wilful desertion and abandonment for uninterrupted space of three years. If the cause occurred outside the District, the plaintiff must have lived here for two years next preceding suit. The court may give alimony to the wife, and may reserve to her the right of dower in her husband's estate, in its discretion.

**FLORIDA.****WIFE'S LEGAL STATUS.**

ALL property, real and personal, owned by a wife at marriage, or lawfully acquired afterward in any way, constitutes her separate property; and it is not liable for her husband's debts without her consent formally executed in writing and acknowledged like a deed of her realty. It is liable for her debts contracted for the benefit of this separate estate, but not for necessaries for herself and family. But that it may be thus secured to herself, and free from her husband's creditors, it must be inventoried and recorded as her separate property in accordance with certain statutory requirements. Husband and wife must join in all conveyances and sales of her property, and in all contracts binding upon her property, unless she is a free trader, and she must acknowledge on private examination that she executes the transaction without compulsion of her husband. She may become a free dealer, and manage and control her estate alone as if un-

married, by obtaining a license to that effect from the Circuit Court, and conforming with certain formalities. She may make a will of all property, real and personal, as if unmarried.

#### CLAIMS ON PROPERTY.

Common law dower prevails, but instead of her dower a widow may elect to take a child's share in both realty and personality; that is, to share equally with the children and issue of any deceased child who survive her husband, taking such share absolutely, instead of for life. If he dies without issue and without a will, she is his sole heir. If a wife dies without a will, her husband takes a child's share in her property; and if she leaves no will and no issue, he is her sole heir.

#### DIVORCE.

Causes for divorce are adultery; impotence; bigamy; extreme cruelty; habitual indulgence of violent and ungovernable temper; habitual intemperance; wilful and continued desertion for one year; marriage within the prohibited degrees of relationship, either of blood or marriage; also if the other party has obtained a divorce elsewhere, it is cause for a divorce to the party resident in Florida.

Plaintiff must have resided in the State for two years next prior to suit. Court may provide for wife out of the husband's estate on giving a decree of divorce.

Instead of applying for a divorce, a wife may bring suit for alimony and separation, if her husband has deserted her for one year, or has lived in open or avowed adultery for three months, or has treated her cruelly, or has committed any other act which is cause for divorce in this State.

## GEORGIA.

## WIFE'S LEGAL STATUS.

ALL property owned by a woman at marriage, or acquired afterward in any way, constitutes her separate estate, free from the debts or control of her husband, but liable for her own debts, except those for the support of herself and family when she contracts them as her husband's agent. She may make contracts and sue and be sued concerning her estate as if unmarried; but she cannot bind herself as surety for her husband, nor can she assume his debts, nor can she sell her property to her husband except by order of the Superior Court. She may become a free trader by consent of her husband published for one month in a newspaper, and is then liable on all contracts as if single. A woman may be executrix or administratrix, and her marriage does not affect her powers as such. Any person, married or single, may make a will of real and personal property at the age of fourteen years. Marriage revokes a will previously made.

## CLAIMS ON PROPERTY.

A widow may take dower in the real estate of which her husband died possessed. But instead of this, if her husband died without a will, the widow may take a child's share of both real and personal estate absolutely, unless there are more than five children, or descendants thereof, in which case the widow may take one fifth of all the property absolutely. If the wife dies without a will, the widower may take a child's share of her estate. If either husband or wife dies without a will, and leaving no issue, then the surviving widow or widower is sole heir. A widow and her children

are entitled to a twelve-month's support out of her husband's property after his death, in preference to all other claims on the estate. A husband cannot leave more than one third of his property by his will to any religious, charitable, or public purpose, to the exclusion of his widow or children.

#### DIVORCE.

Causes for absolute divorce are adultery; cruel treatment; habitual intoxication; intermarriage between persons within the prohibited degrees of relationship by blood or marriage; mental incapacity or impotency at time of marriage; fraud, force, menace, or duress in obtaining marriage; wilful desertion for three years; conviction and imprisonment in penitentiary for term of two years or more for crime involving moral turpitude; and to the husband for pregnancy of the wife at marriage by another, and unknown to him.

Trial is by jury, and the verdict may be for a total or partial divorce. Cruel treatment or habitual intoxication are grounds either for total divorce or partial divorce, that is, from bed and board, at the discretion of the jury. A total divorce will only be given if two juries, at different terms of court, unite on the verdict in favor of it. The second jury will also determine what division shall be made of the property.

#### IDAHO TERRITORY.

##### WIFE'S LEGAL STATUS.

THE community system prevails here. All property owned by either husband or wife at marriage, or acquired afterward by gift, by will, or by inheritance, constitutes the separate property of each. All acquired otherwise is the common

property of both, but the husband has the exclusive management of it. The wife's separate estate must be inventoried and recorded. The husband also manages the wife's estate during the marriage; but he cannot sell or encumber it unless she joins in the deed or sale, though he may sell the common estate alone. If he mismanages or wastes her property, the court will give its control to a trustee. Each is liable for his and her own debts, but not for those of the other. She may make contracts concerning her separate estate. She may also become a sole trader by decree of the District Court, and she may then carry on business as if unmarried, and may also be held responsible for the maintenance of her children. She may make a will of all her property at eighteen years of age.

#### CLAIMS ON PROPERTY.

There is no courtesy or dower, unless dower was restored by the act of Congress of March 3, 1887, whereby it was enacted that a widow shall have the right of dower in all the Territories of the United States. If the wife dies, the widower takes all the community property without administration. If the husband dies, the widow takes one half the community property. If either party dies without a will, the surviving widow or widower takes one third of all property left by the deceased; if there is but one child, or descendants of one, the survivor takes one half; if no issue or parent or brother or sister be left, then the survivor takes it all.

#### DIVORCE.

Causes for divorce are adultery; extreme cruelty; wilful desertion for one year; wilful neglect or habitual intemperance for one year; or conviction of a felony. The plaintiff must have resided here six months before bringing suit.

## ILLINOIS.

### WIFE'S LEGAL STATUS.

ALL property, real and personal, owned by a woman at marriage, and all acquired thereafter by inheritance, by gift, or by purchase, is her separate property, which she may hold in her own right, and may manage, sell, and convey to the same extent and in the same way that the husband can do with his property. But if a transfer of property is made directly between husband and wife, it is not valid as regards third persons unless such transfer is in writing and acknowledged and recorded. And she cannot enter into a business partnership without her husband's consent, unless he has abandoned her, or is insane, idiotic, or imprisoned. A wife may make all manner of contracts, sue and be sued alone, and control her own earnings. She may make a will in the same manner and to the same extent as a married man may do. Neither is liable for the debts of the other, but the property of both may be chargeable with the expenses of the family and education of the children. If either party abandons the other for a year without providing for the support of the family, or is imprisoned, idiotic, or insane, the court may place his or her property in the control of the other, and subject it to the support of the family and payment of his or her debts. A married woman may act as executrix or administratrix. Marriage revokes a will previously made. Women are of age at eighteen for all purposes.

### CLAIMS ON PROPERTY.

There is no courtesy. Husband and wife have an equal interest in the real estate of each other, which interest is

that of dower; that is, one third for life of all realty belonging to the deceased during the marriage, including equitable estates, and estates which have been contracted for and the title to which is capable of being completed. Where the deceased leaves no will, the surviving widow or widower takes one third of the personality absolutely, and the dower interest just named in the realty, if there be issue of the deceased; but if there be no issue, then the widow or widower takes one half absolutely of the realty, and all of the personality. If there be no kindred, the widow or widower is sole heir. The "widow's award," which must be paid out of the estate of a deceased husband in preference to any other claim except funeral expenses, consists of certain specific articles aggregating in value to about twelve or fifteen hundred dollars, the amount being graded somewhat according to her condition in life; or she may take the value of such articles in money.

#### DIVORCE.

Causes for divorce are adultery; impotency; bigamy; desertion or drunkenness for two years; an attempt on the life of the plaintiff, by poison or other means showing malice; extreme and repeated cruelty; conviction of infamous crime. Marriages between cousins of the first degree are void since 1887. Plaintiff must have resided in the State one year, unless the cause occurred in this State, or while one or both the parties resided in the State. Alimony and counsel fees may be given the wife, also custody of children, with an order on their father for their support. A woman who is without means may prosecute a libel for divorce without payment of costs or fees to attorneys. A woman who, without her fault, lives apart from her husband, may bring an action in equity against him for separate support instead of for divorce.

## INDIANA.

## WIFE'S LEGAL STATUS.

ALL property, real and personal, owned by a woman at marriage, and all acquired by her afterwards in any way, constitutes her separate estate, free from her husband's control or debts, and she may bargain, sell, and convey it as if single, except that she cannot convey her real estate without her husband's signature. If he has abandoned her, or is of unsound mind or in prison, she may apply to the court for leave to convey her land alone and to make contracts as if single. In any case she may make contracts and sue and be sued concerning her separate estate. But she cannot enter into any contract of suretyship, whether as indorser, guarantor, or otherwise, and she cannot mortgage her property as security for her husband's debts. Contracts directly between husband and wife will probably be upheld by the courts. She may carry on any trade or business alone, and the profits or her earnings are her own, free from her husband's creditors. Her husband is not liable for debts contracted by her in her trade or business or concerning her estate. She is entitled to the same exemption of property from seizure and sale for her separate debt as are householders; that is, to the amount of six hundred dollars. She may make a will as if unmarried. She may act as executrix or administratrix with her husband's written consent. Marriage revokes a woman's will previously made.

## CLAIMS ON PROPERTY.

There is no courtesy or dower. A widow takes one third of her husband's real estate in fee absolutely, whether he

leaves a will or not, free from the demands of his creditors. After payment of debts, she also takes one third of the personalty. If he leaves no will, and but one child or descendants of but one, the widow takes one half both of the real and personal estate. In all cases the widow is entitled to five hundred dollars out of the estate without accounting, and if the entire estate does not amount to more than this sum, no court fees need be paid out of it for administration. If a widow marries again, she cannot convey real estate which came from her first husband, if children of her first marriage survive, unless they are adults and join therein. If a widower marries again, and children by his first marriage survive him, his widow takes only a life estate in his realty, unless she also has surviving children by him. A widow in any case may occupy the dwelling and forty acres of land of her deceased husband free of rent for one year.

If a wife dies, the widower takes one third of her real and personal estate in fee absolutely, whether she leaves a will or not, and without regard to its amount. If either party dies leaving no will and no issue, but leaving a parent, three fourths of all his or her property, real and personal, goes to the widow or widower, unless the whole does not exceed one thousand dollars, when it all goes to the widow or widower. And if no parent survives, then the widow or widower takes it all without regard to the amount.

#### DIVORCE.

Causes for divorce are adultery; impotency; abandonment for two years; cruel and inhuman treatment; habitual drunkenness; conviction, subsequent to the marriage, of an infamous crime; failure of husband for two years to make

reasonable provision for his family. Plaintiff must have been a bona fide resident of the State for two years and of the county for six months preceding suit. The party obtaining the divorce cannot marry again within two years, that length of time being allowed the defendant within which to open up the decree for any just cause.

Marriages which are prohibited by law on account of too near relationship by blood or marriage, difference of color, or bigamy, are void without divorce if they were solemnized within this State.

## IOWA.

### WIFE'S LEGAL STATUS.

A MARRIED woman may hold as her separate property all real and personal estate owned at marriage or afterwards acquired in any way, and she may manage, sell, and convey the same just as the husband may do with his. She may make a will of all her property, subject only to the claim of her husband which she cannot defeat; nor can he, by his will, defeat her claim on his property if she survives him. Her wages are her own. She may make contracts of all kinds, and may sue and be sued as if unmarried. Neither husband nor wife is liable for the debts of the other, incurred before or during marriage. Expenses of the family and education of the children is chargeable upon the property of either husband or wife or both. Both parents are equally entitled to the care and custody of the children. Contracts of all kinds and conveyances of property directly between husband and wife are binding, and they may form a business partnership together. A married woman may act as executrix or administratrix. A woman is of age at eighteen;

but minors may become of age by marriage, which is valid if the parties to it are sixteen and fourteen years of age respectively.

#### CLAIMS ON PROPERTY.

There is no courtesy or dower. The surviving husband or wife is entitled to an equal share in the property of the other, namely, one third absolutely of all real estate possessed by the deceased during the marriage, which had not been sold to satisfy any judicial decree, and the right to which had never been legally relinquished by the survivor. One third of the personalty of which the deceased was possessed at death, after payment of debts, also goes to the survivor. If no issue survives, then the widow or widower takes one half of the entire estate instead of one third.

#### DIVORCE.

Causes for divorce are adultery; desertion without reasonable cause for two years; conviction of felony after marriage; habitual drunkenness contracted after marriage; inhuman treatment endangering life; and in favor of the husband for pregnancy of the wife by another at time of marriage, unknown to the husband, unless he also had an illegitimate child living at time of the marriage unknown to the wife.

Marriage may also be annulled for impotency, insanity or idiocy; when prohibited by law as being within the prohibited degrees of relationship or for other reasons; and for bigamy, except that if the parties have continued to live together after the death of the former husband or wife, the marriage thereby becomes valid.

Plaintiff must have resided one continuous year in the State, unless the defendant is also a resident and has been

served with personal notice of the petition. The court may make such decrees as in its discretion seem proper in relation to the children and property of the parties, and the maintenance of the wife, and the guilty party forfeits all rights acquired by the marriage.

## KANSAS.

### WIFE'S LEGAL STATUS.

ALL property, real and personal, belonging to a woman at marriage, and all coming to her afterwards in any way except by gift from her husband, is her own, free from his control or debts. She may contract, and sue and be sued, and may sell and convey her property in the same manner and with the same effect as if she were unmarried. She may enter into any trade or business as if unmarried and the proceeds, or the wages of her labor are her own. She may dispose of her property by will to the same extent and executed in the same manner as a married man may do, but neither husband nor wife can by will deprive the other of more than half his or her property unless the consent of the wife or husband to the will be given in writing executed in the presence of two witnesses. Marriage of a man or woman revokes a will previously made.

Women are of age at eighteen. Women may vote at all municipal elections and are eligible to all municipal offices.

### CLAIMS ON PROPERTY.

There is no curtesy or dower. One half of all real and personal estate in which the deceased husband or wife had a legal or equitable interest during the marriage, and which is not needed for payment of debts, and has not been sold on

any judicial process, goes in fee absolutely to the surviving widow or widower, despite any will of the deceased to the contrary. If husband or wife dies leaving no will and no issue, then the widow or widower takes the entire estate, real and personal, in fee. The homestead, actually occupied by the family, and such personal property as is exempt by law from attachment for debt, goes to the widow and children, or either of them, in preference to claims of creditors.

#### DIVORCE.

Causes for divorce are, adultery; bigamy; impotency; one year's abandonment; extreme cruelty; habitual drunkenness; conviction of felony; gross neglect of duty; fraud in the marriage contract; and in favor of the husband for pregnancy of the wife by another at time of marriage, unknown to him. Plaintiff must have resided in the State one year. Neither party can marry again till six months after date of divorce, within which time proceedings may be taken for any suitable reason to reverse the decree. Alimony and custody of children may be given to the wife in the discretion of the court.

The wife may bring an action against her husband for alimony simply, without divorce.

#### KENTUCKY.

#### WIFE'S LEGAL STATUS.

A MARRIED woman can only hold such property as has been put in trust for her separate use. This constitutes her equitable separate estate, and the doctrines of equity apply to it, but her wages and earnings are her own. The husband has the use of his wife's real estate and may collect

the rents and lease it, though not for a longer term than three years. She cannot convey it unless he joins in the deed. Her estate, or the rents and profits from it, are not liable for her husband's debts, but are liable for her debts contracted before marriage, and for such debts for necessities for herself and family, husband included, contracted after marriage as are proved by a written agreement signed by her. The husband is liable for antenuptial debts of his wife to the extent of property which he receives from her, but no further. Except for necessities, a wife cannot make contracts binding on her separate property, unless the court has authorized her to transact business in her own name, which it may do on petition by husband and wife; and a wife may also contract as if single, if the husband has abandoned her, or is in the penitentiary for an unexpired term of more than one year, or has left the State without making provision for her maintenance, or if she has come to live in the State without her husband. She may make a will of her personal property if her husband gives his written consent to the will. She may make a will disposing of real property which is held in trust for her, if the instrument creating the trust provides that she may do so. She cannot act as executrix or administratrix.

#### CLAIMS ON PROPERTY.

Common law courtesy and dower in the real estate of a deceased husband or wife prevail. The husband takes all the personality of which his wife dies possessed and which is not held in trust for her, unless he has given his written consent to her will disposing of it otherwise, and he may revoke such consent at any time before the will is probated. The widow takes one third her deceased husband's personality; or if no issue survives, one half of it.

**DIVORCE.**

Causes for divorce are, impotency; and living entirely separate for five years next before the application. Also to the party not in fault for living in adultery with another; abandonment for one year; conviction of felony in or out of the State; loathsome disease concealed at marriage or contracted afterwards; force, duress, or fraud in the marriage contract; uniting with religious society forbidding marriage. Also to the wife when not in like fault for confirmed habit of drunkenness continued one year coupled with wasting of his estate and failure to provide suitable maintenance for wife and children; such habitual cruel and inhuman treatment for six months as indicates a settled aversion and tends to destroy permanently her peace and happiness; such cruel beating or injury or attempt at injury as indicates an outrageous and ungovernable temper and probable danger to her life or of bodily injury. Also to the husband for wife's pregnancy at marriage by another, unknown to the husband; adultery, or such lewd behavior as proves the wife to be unchaste; and when the husband is not in like fault, habitual drunkenness for one year. The court may give divorce from bed and board for any cause it may deem sufficient.

Plaintiff must have resided a year in the State. The wife's property is restored to her at divorce; and if her estate is insufficient for her support, an equitable provision may be made for her out of her husband's property, if she is the innocent party.

the rents and lease it, three years. She cannot deed. Her estate, or the liable for her husband's contracted before marriage for herself and after marriage as are paid by her. The husband wife to the extent of what no further. Except for contracts binding on her has authorized her to which it may do on the wife may also contract abandoned her, or for a term of more than making provision live in the State will of her parents consent to the property creating act a

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## CLAIMS ON PROPERTY.

There is no courtesy or dower. At death of either husband or wife, the survivor takes half the community property outright; and if the deceased left a will, the other half goes according to the will; or if there is lawful issue or a parent or grandparent, the half goes to such heirs or heir; but if not, then this half also goes to the widow or widower for her or his life. If a widow or widower with children, marries again, she or he can give to such second husband or wife, either by will at death or by gift during life, only one third of her or his property. If the wife brought no dowry or an inconsiderable one compared with her husband's property, if either dies rich, leaving the survivor poor, such survivor may take what is called the "marital portion," out of the separate estate of the other; that is, one fourth absolutely of the entire property of deceased, if there are no children; if there are not more than three children, this portion is only for life; if there are more than three children, the portion which can be taken is only a child's share for life; and this portion must include any provision that may have been made for the survivor by the will of the deceased.

## DIVORCE.

Causes for immediate divorce are adultery and sentence to infamous punishment. For the other causes, namely, such habitual intemperance, excess, cruel treatment or outrages as renders living together insupportable; also public defamation, abandonment for five years, or attempts on the life of the other, a decree of separation from bed and board may be given, which may be followed by a decree of absolute divorce one year later if no reconciliation has taken place meanwhile. Divorce dissolves the community property and

each party takes back the property which he and she brought into the marriage, together with one half the community property after payment of community debts. Marriages between whites and negroes to the third generation are void.

## MAINE.

### WIFE'S LEGAL STATUS.

A MARRIED woman may hold as her own all property belonging to her at marriage, or coming to her afterwards in any way; and she may make all contracts; sue, and be sued; manage, sell, and convey her property or devise it by will, as if unmarried, except real estate that has come to her directly from her husband, and which is not in payment of a genuine debt actually due from him. Such real estate cannot be conveyed by her unless he joins in the deed. And if he gives her property, without a valuable consideration from her in return, his previous creditors may take it in payment of the claims due them. If her husband deserts her and leaves the State, she may be empowered by the court to receive and use his personal property. Her estate is liable for her debts but not for his. She may carry on any trade or business on her own account.

### CLAIMS ON PROPERTY.

There is no courtesy. The claim of husband and wife on the real estate of the other is the same, namely,—the survivor takes one third for life, or if there is no issue, one half. If no kindred survives and there is no will, all the property of the deceased goes to the widow or widower. If there is no will, one third of the personal property goes to widow or widower if there is issue; if no issue, then one half.

## DIVORCE.

Causes for divorce are adultery; impotency; extreme cruelty; utter desertion for three consecutive years; gross and confirmed habits of intoxication; cruel and abusive treatment; and in favor of the wife where the husband, being of sufficient ability, grossly or wantonly and cruelly refuses or neglects to provide suitable maintenance for her. The parties must have been married in this State, or lived here after marriage, or the plaintiff must have lived here when the cause occurred, or must have resided here one full year before bringing suit. The wife may have alimony, and, if innocent, may have dower. The court may decree the custody of children in its discretion. Marriages prohibited by law are void; and a marriage becomes void when one of the parties is sentenced and imprisoned for life.

## MARYLAND.

## WIFE'S LEGAL STATUS.

ALL property belonging to a wife at marriage, or acquired by her afterwards in any way except from her husband in fraud of his creditors, including her earnings, is her own and may be managed by her as if single, without the intervention of a trustee; it is liable for her own debts but free from those of her husband. She may contract, sue, and be sued, and carry on business alone. She may make a will of all her property as if single, except of property owned by her before 1860, if she was married before that time; but she cannot convey her real estate during life without her husband's joinder in the deed. Women are of age at eighteen years so far as to demand their property from their guardians, and to make a valid will.

**CLAIMS ON PROPERTY.**

Dower and curtesy attach to equitable interests in property as well as to property actually in possession during marriage; but it seems that a wife may deprive her husband of his claim to curtesy in her real estate by her will disposing of it otherwise. The birth of a child is not necessary to give curtesy in this State. If there is no will and no kindred, all the property of a deceased husband or wife goes to the survivor. If there is no will, the widow takes a third of her husband's personal property; if no issue, but a parent, brother or sister, nephew or niece, survives, the widow takes one half; if no such relative, the whole. A widower takes of his wife's personality for his life if she leaves no will, but leaves issue; if no issue, then he takes the whole absolutely.

**DIVORCE.**

Causes for absolute divorce are adultery; impotency; canonical causes of impediment existing previous to marriage; abandonment for three years; illicit intercourse by wife before marriage unknown to the husband at time of the marriage. Divorce from bed and board is given for excessively vicious conduct, cruelty, abandonment, and desertion. The court may give the wife her property and alimony, and may give custody of children in its discretion. If the cause occurred out of this State, the plaintiff or defendant must have resided in the State for two years prior to bringing suit. An action for alimony without divorce may be brought by a wife.

**MASSACHUSETTS.****WIFE'S LEGAL STATUS.**

A MARRIED woman may hold all property of whatever nature owned by her at marriage or acquired afterwards in any way except from her husband, and may manage and control it as if she were unmarried, except that she cannot convey or mortgage her real estate so as to give a clear title, unless her husband joins with her in the deed in release of his courtesy. She may receive as a gift from her husband personal apparel, ornaments, and articles necessary for her personal use, to the value of two thousand dollars. She may make all manner of contracts and they will be binding on her and her estate as if she were single, except that she cannot enter into any kind of contract or agreement with her husband which will be binding on either of them or on the estate of either. She may enter into any trade, business, or profession, and may form a business partnership with any person except her husband. In order that the property employed in her separate business may be protected from her husband's debts, and in order that he may be free from responsibility for her business contracts, a "married woman's certificate" must be filed in the clerk's office in the city or town where she does business; in the absence of such a certificate, the presumption will be that the business is really her husband's and not hers. She may sue and be sued alone, except that no suit can be maintained between husband and wife. The property of neither is liable for the debts of the other contracted before or after marriage, but contracts made by the wife as her husband's agent after marriage for necessaries for herself and family, are binding on him. Her earnings are her own and cannot

be claimed by him or trusteeed by his creditors. She may be executrix, administratrix, guardian, or trustee. She may make a will disposing of all her property if her husband's consent be written and signed upon the document itself. Without his consent, her will is good to dispose of one half her personal property, and the title to her real property after his life interest in it shall cease, except in the case where the law gives him her realty to the value of five thousand dollars, as referred to below. Marriage revokes or suspends the will of a woman made previously.

#### CLAIMS ON PROPERTY.

Common law courtesy and dower prevail. If no courtesy attaches, there having been no child born alive during the marriage, the widower takes a life interest in one half of all the realty owned by his wife during marriage, instead of the whole. If no issue survives at the husband's death, the widow takes one half his realty for her life instead of one third. Also at the death of either husband or wife, leaving no issue, the surviving widow or widower takes the real estate owned by the deceased at death, in fee, absolutely, up to the value of five thousand dollars; the widow takes her life interest besides in one half the balance of her husband's real estate; and the widower takes above the five thousand dollars' worth, his life interest in the whole of the balance if his courtesy has attached by the birth of a child (since deceased), or in one half of it, if no child has been born. No provisions of any will left by the deceased can deprive either widow or widower of these claims on the real estate of the deceased, and the widower may also claim one half his deceased wife's personality. The widow can claim one third of her deceased husband's personality if

issue survives. If no issue survives, she may claim all his personality up to the value of five thousand dollars; the value of the next five thousand dollars goes to his heirs or according to his will, and the balance above this ten thousand dollars' worth is equally divided between the widow and her husband's heirs or legatees; but if he leaves a will, then if the widow's share of personality as stated above, exceeds the value of ten thousand dollars, she can only take, as against the will, the income for her life of such surplus, the value of ten thousand dollars going to her absolutely in any case, whether there is a will or not.

#### DIVORCE.

Causes for divorce are adultery; impotency; extreme cruelty; utter desertion for three consecutive years next prior to the filing of the libel; gross and confirmed habits of intoxication; cruel and abusive treatment; or, on the libel of the wife, when the husband, being of sufficient ability, grossly or wantonly and cruelly refuses or neglects to provide suitable maintenance for her. Also for uniting with any religious society that believes the relation of husband and wife unlawful, and continuing with such society three years without the consent of the other; and sentence to confinement at hard labor for five years.

All decrees are *nisi* in the first instance, but they may become absolute at the expiration of six months on application of either party, if no reconciliation has taken place and if no cause is shown by any one interested why the absolute decree should not be given. To give the court jurisdiction, the parties must have lived together as husband and wife in this State, or if the cause occurred elsewhere, they must have previously lived together here, and one of them must also have been resident here when the cause

occurred; or if they were inhabitants of this State at the time of the marriage and the libellant (plaintiff) has lived here three years next prior to the action, it is sufficient; or if the libellant has resided in this State five consecutive years next prior to the action, unless it appears that he or she came here for the express purpose of obtaining a divorce, and not intending to remain here.

The court may decree alimony and custody of children. The guilty party cannot marry again until the expiration of two years after the date of the absolute decree.

## MICHIGAN.

### WIFE'S LEGAL STATUS.

ALL property of whatever kind owned by a woman at marriage and all that she acquires afterwards from any source constitutes her separate property, free from her husband's control or debts. She may manage and control the same as if unmarried. She may deal directly with her husband, and may carry on trade or business in her own name if her husband consents. She may make contracts of all kinds for the benefit of herself or her estate, but she cannot enter into ordinary contracts of suretyship for her husband or any other person. Husband and wife may contract together in such cases as were upheld by the old equity courts. She may dispose of all her property by sale, gift, deed, or will, free from her husband's consent or joinder.

### CLAIMS ON PROPERTY.

There is no courtesy, but common law dower still prevails. If a wife dies without a will and leaving personal property, the husband takes one third after payment of debts and

charges of administration, or, if there is but one child, he takes half; if there is no issue nor parent, brother or sister or issue of any, husband takes the whole. If a husband dies leaving no issue, all his real estate goes to his widow for her life ; if he leave no kindred, it goes to his widow absolutely. If he leave personality and no will, one third goes to the widow, or if there is but one child, one half ; if no issue survives, the widow takes it all up to the value of one thousand dollars and half the balance above that sum, unless no parent, brother, or sister of the deceased, or issue of a deceased brother or sister survives, in which case the widow takes it all. If the husband leaves a will, the widow may choose whether she will take the provision, if any, made for her by the will, or the share given her by the statute; and if she choose the latter, she may take such share up to the value of ten thousand dollars, and half the balance which she would have taken had there been no will. If no provision is made for her by the will, she may take just what would have come to her if the deceased had left no will. A widow may remain one year in the dwelling-house of her deceased husband without rent, and may have her reasonable sustenance for that time out of his estate.

#### DIVORCE.

Causes of absolute divorce are adultery; impotency; imprisonment for three years; desertion for two years; habitual drunkenness; divorce obtained in another State by the other party. Divorce from bed and board, or absolute divorce at the discretion of the court, may be given for extreme cruelty, whether from personal violence, desertion, or otherwise; desertion for two years; and in favor of the wife when the husband, being of sufficient ability, grossly

or wantonly and cruelly refuses or neglects to provide suitable maintenance for her. Sentence to imprisonment for life absolutely dissolves marriage without any decree of divorce or other process.

Plaintiff must have resided in the State one year next preceding the action, unless the marriage took place in the State and one of the parties had resided here ever since. If the cause occurred outside the State, one or other of the parties to the marriage must have resided in the State two years next prior to the suit. If there are children under fourteen, the prosecuting attorney must appear in behalf of them.

The court may provide concerning alimony and the custody of children, and may also decree that the guilty party shall not marry again for any stated time, not exceeding two years.

Marriages within the prohibited degrees, bigamous marriages, and marriages performed during the insanity or idiocy of one of the parties, are void without divorce.

## MINNESOTA.

### WIFE'S LEGAL STATUS.

ALL property belonging to a woman at marriage and all acquired by her afterwards in any way, is her own, free from her husband's control or debts. She may manage, control, and dispose of her property, and may contract as if single; she may even make binding contracts with her husband, except concerning his or her real estate. Such contracts, also powers of attorney from one to the other concerning real estate, are void. To convey her real estate or any interest therein, or to mortgage it, or lease it for

more than three years, her husband must join in the conveyance. He is liable for necessaries furnished her, but otherwise neither is liable for the debts of the other. She may make a will of all her property, except that neither husband nor wife can deprive the other, without her or his consent, of her or his claim to one third. All common law disabilities are practically removed from married women. They may act as executrix or administratrix, and may be appointed guardian. A woman is of age at eighteen, but if married younger, may join with her husband in deeds of conveyance while under age.

#### CLAIMS ON PROPERTY.

There is no courtesy or dower. The surviving widow or widower takes the homestead of the deceased for her or his life, free from the debts of the deceased; and after payment of debts, one third of all the other real estate owned by the deceased at any time during the marriage also goes to such survivor absolutely, as well as one third of the personalty, besides certain small specific provisions out of the personalty which are payable to the survivor and children in preference to creditors.

#### DIVORCE.

Causes for absolute divorce are adultery; impotency; cruel and inhuman treatment; sentence to imprisonment in state-prison; wilful desertion for three years; habitual drunkenness for one year next preceding the action. For absolute divorce, the plaintiff must have resided in the State one year, except in cases of adultery committed while resident in the State.

Divorce from bed and board may be given to the wife for cruel and inhuman treatment; such conduct on part of hus-

band as may render it unsafe or improper for the wife to live with him; abandonment of wife and refusal or neglect to provide for her. For this limited divorce, both parties must be inhabitants of the State; or the marriage must have taken place in the State and the wife be an actual resident at time of the complaint, or if the marriage took place elsewhere, the parties must have resided here for one year and the wife be an actual resident at time of the complaint.

The court may decree in its discretion concerning custody of children and alimony, but the allowance given to the wife cannot exceed one third of her husband's personal estate and the value of her dower in his real estate. If the divorce be for her adultery, her own realty may be withheld from her.

Marriages within the prohibited degrees, and bigamous marriages are absolutely void; and marriages may be pronounced void by the court on account of the absence for five years of one of the parties; lack of legal age; and when induced by force or fraud.

## MISSISSIPPI.

### WIFE'S LEGAL STATUS.

ALL property belonging to a woman at marriage, or coming to her afterwards in any way, is her own, free from her husband's debts or control, and may be managed, sold, and conveyed by her as if single. She may make all kinds of contracts, with her husband as with any one else, but in order that gifts and conveyances between husband and wife may be binding, they must be written, acknowledged, and recorded. The husband cannot convert his wife's property to his own use, but he may use it for the support of the family with her consent. She may engage in any trade, or

business, alone. She may make a will of her property, real and personal, as if single. All common law disabilities are practically removed from married women.

#### CLAIMS ON PROPERTY.

There is no courtesy or dower in the estates of persons deceased since November, 1880. Since that date, if a husband or wife dies without a will and leaving children, the widow or widower takes a child's share both of realty and personalty; if no issue survives, the widow or widower takes all the estate absolutely, both real and personal. One year's provisions out of the effects of her deceased husband, or an allowance of money for the purchase of necessaries for herself and children, is always set apart for a widow.

#### DIVORCE.

Causes for divorce are adultery; bigamy; impotency; that the parties are within the degrees of consanguinity or affinity prohibited by law; sentence to penitentiary; wilful, continued, and obstinate desertion for two years; habitual drunkenness; insanity or idiocy at time of marriage; habitual, cruel, and inhuman treatment marked by personal violence; pregnancy of wife at marriage by another and unknown to the husband. Plaintiff must have resided one year in the State before filing the bill. The court may make any decree in its discretion concerning alimony and the custody of children.

## MISSOURI.

### WIFE'S LEGAL STATUS.

A MARRIED woman may hold in her own name all personal property, including her earnings, acquired before or after marriage, free from the debts or control of her husband, except that it will be liable for debts incurred by him for necessaries for her and the family. She may sue for such property alone. She may have real property also which is held by a trustee for her use. Stocks and bonds given by a parent to a daughter are her own, free from her husband's debts. She may make contracts binding upon her property, real and personal, but such contracts must concern her separate estate. She cannot convey her interest in realty without her husband's joinder. The husband's property, except such as he received from her, is not liable for the wife's antenuptial debts. She may make a will of all her property, real and personal; but neither a wife nor a husband can by a will deprive the survivor of courtesy or dower, unless such survivor choose to abide by the will, thereby voluntarily renouncing claim to courtesy or dower. She cannot act as executrix or administratrix. Women are of age at eighteen.

### CLAIMS ON PROPERTY.

Common law courtesy and dower prevail. If a husband dies leaving issue, the widow takes a child's share of his personality. If no issue, then she takes absolutely all the personal property which came to him by the marriage and also one half of all the real and personal estate of which he died possessed, provided she makes a written election within one year to take such share, subject to the payment of his debts,

instead of her dower, or any provision in his will. This election must be acknowledged and recorded. If no election is made, she can only claim dower in his realty, as against his will, and no share of his personalty. But if either husband or wife leaves no issue, parent, brother, sister, nephew, or niece, and no will, the widow or widower takes all the estate.

#### DIVORCE.

Causes for divorce are adultery; impotency; bigamy; absence without reasonable cause for one year; conviction of felony or infamous crime after marriage, or before marriage if without the knowledge of the other; habitual drunkenness for one year; such cruel and barbarous treatment as to endanger the life of the other; such indignities as render the life of the other intolerable; in favor of the wife, that the husband is a vagrant; in favor of the husband, that the wife was pregnant at time of marriage by another and without the husband's knowledge. Plaintiff must have resided one year in the State.

If a husband unjustly deserts his wife, and she prefers not to apply for a divorce, she may have a decree of court providing for her maintenance out of his property, authorizing her to sell his real estate, to claim payment from his debtors, and to claim the earnings of her minor children.

#### MONTANA.

##### WIFE'S LEGAL STATUS.

THE community system of property prevails. All property owned by a wife at marriage, or acquired thereafter in any way, is her separate property free from her husband's debts,

unless contracted for necessaries for herself and minor children. But such property must be itemized in a list and be recorded in the registry of deeds in the county where she resides. A statute of 1887 declares that she has the same legal existence and personality after marriage as before, and may sue in her own name, and may make contracts in her own name binding on herself and her property and not on her husband, and may dispose of any interest in real estate. She may become a sole trader by making a written declaration of her intention, acknowledging and recording it. She is then responsible for maintenance of her children. She may make a will of all her property. Marriage of a woman revokes her will previously made. Women are of age at eighteen.

#### CLAIMS ON PROPERTY.

There is no courtesy or dower, the community system prevailing instead, unless dower was restored by the act of Congress dated March 3, 1887, whereby it was enacted that a widow shall have the right of dower in all the Territories of the United States. Whether dower will prevail in the new State of Montana, will probably be settled by legislative action. On the death of the wife, the entire community property belongs to the husband. At death of the husband, one half the community property goes to the wife, and the other half goes by his will, or to his heirs. If either party dies without a will, the widow or widower takes half of all the separate property of the deceased, if there is but one child or issue of but one, or if there is no child; if more than one, or issue of more than one, the widow or widower takes one third. If there is no issue, nor parent, nor brother or sister, the entire estate goes to the widow or widower.

## DIVORCE.

Causes for divorce are adultery; impotency; bigamy; wilful desertion without reasonable cause for one year; habitual drunkenness for one year; extreme cruelty; conviction of felony or other infamous crime; and in favor of the wife, wilful desertion by husband, and departure from Montana without intention of returning. Plaintiff must have resided in Montana one year, unless the offence was committed while one or both parties resided there. The court may make decrees concerning alimony and custody of children in its discretion. Any woman who is poor may prosecute suit without payment of costs.

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## NEBRASKA.

## WIFE'S LEGAL STATUS.

ALL property owned by a woman at marriage, and all acquired by her afterwards in any way except by gift from her husband, and including her earnings, constitutes her separate property, free from her husband's debts or control; but it is liable for debts contracted for necessaries furnished the family, if no property belonging to the husband can be found by the sheriff out of which to satisfy an execution against him. She may sue and be sued alone, may convey her real estate (except that husband and wife cannot convey directly to each other), and contract in reference to her separate estate, in the same manner and with like effect as a married man may do. She may carry on trade or business on her own account. Neither is liable for the debts of the other contracted before marriage. A wife may make a will of all

her property. A woman is of age at eighteen, or a married woman at any age after sixteen.

#### CLAIMS ON PROPERTY.

Common law courtesy and dower prevail, with the following distinctions regarding courtesy. If a wife leaves issue by a former husband, such issue takes her property at once (except gifts from the surviving husband), and the widower takes no courtesy. If she leaves issue by her surviving husband, or by both, he takes, as courtesy, a life interest in one third of the portion of her property which is inherited by his own children. If a husband dies leaving no will and no issue, all his real estate goes to his widow for life, and all his personalty goes to her absolutely. If he leaves no kindred, it all goes to the widow absolutely. Of the personal property left by a man who leaves no will but has issue, the widow takes a child's share.

#### DIVORCE.

Causes for absolute divorce are adultery; impotency; wilful abandonment for two years; habitual drunkenness; sentence to imprisonment for three years. Divorce from bed and board, or absolute divorce at the discretion of the court, when the husband, being of sufficient ability to suitably maintain his wife, grossly or wantonly and cruelly refuses or neglects to do so; desertion for two years; extreme cruelty.

Plaintiff must have resided in the State and county six months, except when the marriage was performed in the State and plaintiff has resided here from then till time of bringing action. Court may make decrees concerning alimony and custody of children. Divorce may be opened up at any time within six months, during which time neither

party can marry. A marriage induced by force or fraud, or performed when one of the parties is under the age of legal consent, may be pronounced void by the court.

## NEVADA.

### WIFE'S LEGAL STATUS.

THE community system prevails here. All property owned by either husband or wife at marriage, or acquired afterwards by gift, by will or inheritance, constitutes the separate property of each; but all other property acquired after marriage is the common property of both, though subject to the control of the husband, who may dispose of it as of his own, during the marriage. The wife may manage, control, and dispose of her separate property alone, without her husband's consent or joinder; but to prove it as her own, it must be inventoried and recorded. She may contract alone concerning her separate property, and sue and be sued concerning it. Husband and wife may contract directly with each other, subject however to the usual rules of law governing parties who stand in confidential relations. She may be a sole trader by application to the court. She is then liable for maintenance of her children. Also if there is no community property, and the husband has no separate property and is unable to support himself, she must support him if she has property. She may make a will of all her property as if unmarried. With her husband's consent, written on the will, she may also dispose of her half of the common property. Marriage revokes a woman's will previously made. A married woman may be appointed executrix or administratrix. Women are of age at eighteen.

**CLAIMS ON PROPERTY.**

There is no courtesy or dower. On the death of the wife, the entire community property goes to the husband, and on the death of the husband without a will and without issue, it all goes to the wife, unless she has been living apart from him without such cause as would give her ground for divorce, in which case she takes no part of the community property; but otherwise, one half goes to her, and the other half goes to his issue or according to his will. Also of the separate property of husband and wife, both real and personal, if either dies without a will and leaving no children, or only one child or issue thereof, the widow or widower takes one half; if more than one, the widow or widower takes one third; if no issue, parent, brother, or sister survives, the widow or widower takes it all.

**DIVORCE.**

Causes for divorce are adultery; impotency; wilful desertion for one year; conviction of felony or infamous crime; habitual gross drunkenness, contracted since marriage, incapacitating the party from contributing to the support of the family; extreme cruelty; in favor of the wife, for neglect of the husband to provide the common necessities of life for one year, when such neglect could be avoided by ordinary industry on the part of the husband, and is not the result of his poverty. The plaintiff must have resided in the State and county six months, unless the action be brought in the county where the defendant resides, or where the cause of action occurred. The community property is equally divided on divorce, unless the cause is adultery or extreme cruelty, in which case the court may make such a division of the property as in its discretion seems just.

Bigamous marriages and those within the prohibited degrees, are void; and marriages induced by fraud, or performed while one of the parties is under age, may be pronounced void by the court.

## NEW HAMPSHIRE.

### WIFE'S LEGAL STATUS.

ALL property owned by a woman at marriage, or afterwards acquired by her in any way, including her earnings, is her own, free from the control or debts of her husband. She may sell or convey it or dispose of it by will as freely as a married man may do with his property, but neither husband nor wife can deprive the other of the right to dower or courtesy. She may make all manner of contracts, except that she cannot bind herself or her property for her husband, as surety or guarantor, or by any kind of undertaking. Conveyances of real estate cannot be given directly between husband and wife, but in some cases they may contract together. She is liable for her own debts, except for necessaries; for these her husband is bound. She may make a will of all her property, but not so as to deprive him of courtesy in her realty or of one third of her personality, or in case no issue survives, of one half of it. If her husband is insane or spendthrift, or has deserted her for three months, or has joined a religious society that ignores marriage, she may apply to the judge of probate for a separate maintenance out of his property, and the decree will also secure her own property to her, as well as the earnings of herself and her minor children ; if they never live together again, her property will descend as though she were a widow. She may also, if deserted or justifiably living apart from her

husband, apply to the Supreme Court to prohibit him from imposing restraint on her liberty, and for an order concerning her support and the custody of minor children. Also if he does not provide for her, or treats her with extreme cruelty or is an habitual drunkard, he may be prohibited from entering the house or tenement in which she lives, if she owns it or pays the rent.

#### CLAIMS ON PROPERTY.

Common law dower in cultivated land prevails. Or the widow may waive her dower and any provision in her husband's will, and take one third absolutely of all the realty owned by him at his death; or if he leaves no issue, she takes one half absolutely. Common law courtesy also prevails, but the widower may claim one third or one half of his wife's land absolutely on the same terms as a widow may do, except that if she leaves any issue by a former husband, and no child by himself has been born so that he has no right by the courtesy, he can take one third of her realty only for his life. And if he has wilfully abandoned her or failed to support her, or in consequence of his own neglect has not been heard from for three years prior to her death, he can claim no part of her property, real or personal. Of the personal property left by either husband or wife, the survivor may take one third, or if there is no issue, one half, despite the provisions of any will of the deceased. A reasonable allowance may always be given to a widow for her present support at the death of her husband, out of his personal estate.

#### DIVORCE.

Causes for divorce are adultery; impotency; extreme cruelty; conviction of crime punishable in this State with

imprisonment for more than a year, and actual imprisonment under such conviction; treatment seriously injuring health; treatment endangering reason; absence without being heard from for three years; habitual drunkenness for three years together; joining any religious sect that believes the relation of husband and wife unlawful, and refusal to cohabit for six months; wilful absence of husband from wife for three years, making no provision for her; wilful absence of wife from husband for three years, without his consent; when the wife has gone to reside out of the State and remains absent and separate from her husband for ten years together, without his consent and without claiming marital rights; when the wife of a citizen of another State, living separate, has resided in this State three years, the husband having left the United States intending to become a citizen of another country, and not having come into this State and claimed his marital rights during this period, and not having made provision for her support.

Both parties must reside in the State; or the plaintiff must reside here and personal service must have been made on the defendant in the State; or one of the parties must reside here, and one of them must have resided here one year next prior to the action.

Bigamous marriages, and those within the prohibited degrees, are void.

## NEW JERSEY.

### WIFE'S LEGAL STATUS.

THE real and personal property held by a woman at marriage, and all acquired afterwards by gift, grant, descent, devise, or bequest, and the profits and income therefrom, and

her earnings, constitute her separate property, free from her husband's debts or control. Since January, 1875, she may bind herself by contracts as though unmarried, except that she cannot contract with her husband, and cannot become an accommodation indorser, guarantor, or surety, nor is she liable on any promise to answer for the debt or default of another. She may sue and be sued alone concerning her separate property, except that she cannot sue her husband. She cannot convey her real property without her husband's consent, unless he refuses or neglects to support her, when she may have an order of court enabling her to do so. She may make a will of all her property as if single, except that she cannot deprive her husband of his claim on her real estate. Marriage and the birth of a child revokes a will made before the marriage. The powers of an executrix or administratrix, or of a woman who is guardian or trustee, are revoked by her marriage; but she and her husband may be appointed together on giving satisfactory bonds.

#### CLAIMS ON PROPERTY.

Common law courtesy and dower in real estate prevail. If a wife dies without a will, her husband takes all her personal property. If a husband dies without a will, the widow takes one third of his personality; or if there is no issue, she takes one half. Household goods to the value of two hundred dollars, and real estate occupied by the husband at his death to the value of one thousand dollars, are secured in any case to the widow and children, and she cannot lose this claim by any waiver of it.

#### DIVORCE.

Causes of absolute divorce are adultery; bigamy; marriage within the prohibited degrees; wilful, continued, and

obstinate desertion for three years. Divorce may be given from bed and board for extreme cruelty.

One of the parties must have been an inhabitant of the State at the time the cause occurred; or the marriage must have taken place in the State and the plaintiff be an actual resident at the time the cause occurred and at the time of beginning action ; or if the cause is adultery, it must have been committed in the State and one or both the parties reside here at the time of beginning action; or one of the parties must be an inhabitant at the time of beginning the action, and one of them a resident for the three years during which desertion has continued. Also in cases of adultery committed out of the State, the court has jurisdiction if one of the parties has lived in the State three years next preceding the beginning of the action.

## TERRITORY OF NEW MEXICO.

### WIFE'S LEGAL STATUS.

ALL property owned by a woman at marriage, or acquired afterwards by gift, by will or inheritance, is her separate property, and that of the husband is his, all other property acquired during marriage, together with the proceeds of their separate estates, being joint or community property. He has the control of her property during marriage. She is bound by her contracts as if unmarried. She cannot convey her real estate alone. Neither is liable for the debts of the other. If she purchases necessaries for the family as his agent, her property is not liable for them; otherwise, it is. She cannot sue or be sued without joining her husband as a party. She may make a will as if unmarried. There is no law fixing the age of majority of women, but they may marry at fifteen;

if younger; the marriage is void. They may make a will of all their property at twelve years of age.

#### CLAIMS ON PROPERTY.

There is no courtesy or dower, unless dower was restored by the act of Congress dated March 3, 1887, whereby it was enacted that a widow shall have the right of dower in all the Territories of the United States. On the death of the husband, whether he leaves a will or not, one third of his real estate goes to her absolutely, free from all demands of creditors, unless it exceeds ten thousand dollars, when the widow takes only one fourth, and as against creditors, only one fifth. If a widow marries again, there being issue of the previous marriage, she cannot, during the subsequent marriage, alienate real estate which came to her by the previous marriage; and at her death, it goes to the issue of such marriage. If a wife dies with or without a will, the widower takes one third absolutely of her real estate after payment of her debts contracted before marriage. If a husband dies without a will, leaving not more than one child, the widow takes one half the real estate; and if not more than two children, she shares the personal estate equally with the child or children; but in any case she takes not less than one third. If either husband or wife dies without a will and without issue, but leaving a parent, the widow or widower takes three fourths of the entire property; if no parent, then the widow or widower takes it all.

#### DIVORCE.

Causes for divorce are adultery; abandonment; cruel and inhuman treatment. Plaintiff must have resided in the Territory six months next prior to beginning suit.

## NEW YORK.

## WIFE'S LEGAL STATUS.

ALL property owned by a woman at marriage, or acquired by her afterwards in any way whatever, including her earnings and the proceeds of any trade or business in which she may engage, constitutes her separate property, free from her husband's debts or control, but liable for her own debts and contracts. She may make contracts of any kind which she could if single, except with her husband, and even some contracts between husband and wife have been held valid. Transfers and conveyances of real estate directly between husband and wife are valid. She may convey her real estate to third parties without her husband's consent or joinder, as if unmarried. She may carry on any trade or business, and may sue and be sued as if single. She may be appointed executrix, administratrix, and guardian; and may make a will of all her property, real and personal, without his consent, thereby depriving him of courtesy. To devise real property she must be twenty-one years old, but she may make a will of personalty at sixteen.

## CLAIMS ON PROPERTY.

Common law dower still prevails, and the husband's will cannot deprive his wife of this right. But courtesy only attaches to such real estate as the wife owns at her death and has not disposed of by her will. On the death of either husband or wife without a will, the surviving widow or widower takes one third of the personal estate of the deceased; and if there is no issue, the widow or widower takes one half instead of a third. If there is no will and no issue

or parent, but a brother or sister, nephew or niece of the deceased survives, then the widow takes one half the personality, and all the residue up to the value of two thousand dollars. If there is no brother or sister, nephew or niece, then the widow takes it all. But where a married woman dies without leaving issue and without a will, the widower takes all her personality.

#### DIVORCE.

The only cause for absolute divorce is adultery. To give the court jurisdiction, both parties must have been residents of the State when the offence was committed; or they must have been married in the State; or the plaintiff must have been resident in the State when the offence was committed and when the action is begun; or the offence must have been committed in the State and the plaintiff be resident here when the action is begun. Divorce leaves the plaintiff free to marry again; but the defendant cannot be remarried within the State during the plaintiff's life, except to the plaintiff, unless the court modifies the decree after the lapse of five years and allows the defendant to marry, which it may do if the plaintiff has meanwhile married again, and if the conduct of the defendant has been uniformly good. But the defendant may remarry in another State, and if the marriage is valid there, it will be valid in New York.

Divorce from bed and board, not freeing from the marriage bond, but decreeing a legal separation, may be given for cruel and inhuman treatment; conduct rendering it unsafe and improper to live with the defendant; abandonment; or in favor of the wife, for the husband's neglect or refusal to provide for her.

Marriage may be declared void for want of legal age by either party; bigamy; idiocy or insanity; impotency; con-

sent obtained by force, fraud, or duress. The legal age at which marriage may be contracted is eighteen for males, and sixteen for females. A woman may obtain a decree annulling her marriage when she was under sixteen at the time it was performed, if it was without the consent of her parent or guardian, if the ceremony was not followed by cohabitation or consummation, and if it was not ratified by any mutual consent of the parties after she arrived at the age of sixteen.

### NORTH CAROLINA.

#### WIFE'S LEGAL STATUS.

ALL property of whatever kind, owned by a woman at marriage, and all acquired afterwards in any way, remains her own separate property, free from her husband's debts. She may dispose of it by her will, saving to her husband his right of courtesy in her real estate; and with her husband's written consent she may convey it by her deed. Unless she is a free-trader, or has her husband's written consent, or unless he has abandoned her, she cannot make contracts binding on her property except for her ante-nuptial debts and for necessaries for herself and family. She may become a free-trader by her husband's consent, written, acknowledged, and recorded, or by ante-nuptial contract, also signed and registered; and she may then contract and deal in all business matters as though unmarried. Marriage revokes a will previously made.

#### CLAIMS ON PROPERTY.

Common law courtesy and dower prevail. If a man dies without a will, his widow takes one half his personality if he

leaves no issue; one third, if there are not more than two children, or descendants thereof; a child's share, if there are more than two, or descendants of more than two. If he dies without a will and without kindred, his widow takes all his property, real and personal.

#### DIVORCE.

Causes for absolute divorce are separation of the husband from the wife and open living in adultery; adultery of the wife, either with or without separation; impotency; pregnancy of the wife at the time of marriage by another, and unknown to the husband; and in favor of the wife, if the husband is indicted for a felony and flees the State and fails to return within one year.

Causes for divorce from bed and board are abandonment; maliciously turning the other out of doors; cruel or barbarous treatment endangering life; such indignities to the person of the other as render his or her condition intolerable, and life burdensome; habitual drunkenness. In these legal separations, alimony may be granted not exceeding the third of the annual income.

Marriages may be pronounced void by the court when within the prohibited degrees of consanguinity or affinity; when parties were under legal age, which is sixteen for males, and fourteen for females; for bigamy; impotency; or mental incapacity at time of marriage.

#### OHIO.

##### WIFE'S LEGAL STATUS.

ALL property, of whatever kind, belonging to a woman at marriage, or acquired by her afterwards in any manner, in-

cluding her personal earnings, constitutes her separate property, free from her husband's debts or control. She may manage, convey, sell, and dispose of this property by will as if unmarried, except that neither can deprive the other of dower in his or her real estate. She may make all manner of contracts and they will be binding on her and her property; and she may sue and be sued, as if she were single. Husband and wife may enter into any transaction with each other, subject only to the general rules controlling the actions of persons standing in confidential relations to each other. Neither is answerable for the acts or the debts of the other; the husband must support himself, wife, and minor children by his property or labor, but if unable to do so, the wife must assist as far as she is able. Husband and wife have no interest in each other's property, except as regards dower and wife's support, but neither can exclude the other from his or her dwelling. Women are of age at eighteen.

#### CLAIMS ON PROPERTY.

Courtesy was abolished in 1887, but vested rights are not affected, and any husband, married before 1887, has the right of courtesy in all real estate owned by his wife before 1887, whether a child was born or not. Dower still prevails; and a widower now has the same right of dower in his wife's real estate which his wife has in his; that is, he may claim for his life one third of all real estate owned by his wife during the marriage; dower also attaches to all reversion and remainder interests held by the deceased husband or wife in fee simple at death, and to all right, title, and interest, held at death by bond, article, lease, or other evidence of claim. If any husband or wife dies without a will and without issue, possessed of any property, real or personal, which came to

him or her from a former wife or husband by gift or by will, then such property goes to the issue of such former wife or husband, if any; if not, half goes to brothers and sisters of such former wife or husband, and half to brothers and sisters of the intestate, but no part to the surviving widow or widower. Of other real property left by a husband or wife who dies without a will and without issue, the widow or widower takes the whole for her or his life; and of the personality, he or she takes it all absolutely, if there is no issue; if issue survives, then the widow or widower takes one half of any sum not exceeding four hundred dollars, and one third of the residue above that sum. There are also certain articles of personal property which must always be set aside for a widow and minor children.

#### DIVORCE.

Causes for divorce are adultery; impotency; bigamy; wilful absence for three years; extreme cruelty; fraudulent contract; any gross neglect of duty for three years; habitual drunkenness for three years; sentence and imprisonment in penitentiary, if divorce is sought during the imprisonment; divorce procured in another State by the other party, the effect of which is to leave the latter party free and the former still bound. Plaintiff must have been a resident of the State for one year. Alimony and custody of children may be decreed by the court in its discretion, on granting a divorce, or a wife may bring an action for alimony and custody of children without divorce, in which case she need not have been a resident for a year.

## OREGON.

## WIFE'S LEGAL STATUS.

ALL property owned by a woman at marriage, or acquired by her afterwards by gift, by will or inheritance is her own, free from her husband's debts or control, and she may manage and control it, convey it by deed, and dispose of it by will to the same extent and in the same manner as a married man may do with his property. She may make contracts for the benefit of herself and her separate estate, and any contract which is expressly charged upon her separate estate is binding upon it. She and her husband may make all manner of contracts together, and may convey property directly each to the other. She may carry on any trade or business, and sue and be sued as if single. She cannot convey her real estate unless her husband joins in the conveyance. By a statute passed in October, 1880, all laws which imposed or recognized civil disabilities upon a wife, which are not imposed or recognized as existing as to the husband, were repealed ; but this law gives her no right to hold office or vote. The rights and responsibilities of the mother as to the maintenance and education of the children are the same as those of the father. Women become of age for most purposes at eighteen, or at their marriage; but they cannot make a valid will of real estate till twenty-one, though they may bequeath personal property at eighteen. Marriage revokes a woman's will previously made.

## CLAIMS ON PROPERTY.

Common law dower prevails; also courtesy whether a child has been born or not. If a man dies without a will and without issue, the widow takes all his estate, real and per-

sonal. If he leaves issue, the widow takes half the personality, but only her dower in the realty. If a wife dies without a will, her husband takes the whole of her personality.

#### DRIVORCE.

Causes for divorce are adultery; impotency; conviction of felony; habit of gross drunkenness contracted before marriage and continued one year prior to suit; wilful desertion for one year; cruel and inhuman treatment or personal indignities rendering life burdensome. Plaintiff must have resided in the State one year. If a divorce is granted, the party in whose favor it is given, shall in all cases be entitled to the undivided third part, in his or her individual right, in fee, of the real estate of the other, in addition to any further decree for maintenance which may be given.

A marriage is void for bigamy; or when the parties are within the prohibited degrees of relationship; or when one of the parties has one fourth or more of negro blood, the other party being white. Also a marriage obtained by force or fraud may be declared void by the court. A wife may bring an action for separate maintenance and custody and support of children instead of divorce.

#### PENNSYLVANIA.

##### WIFE'S LEGAL STATUS.

By the "Married Persons' Property Act" passed in 1887, the common law disabilities which had always obtained concerning married women were removed almost entirely, though many questions as to the construction of the act have not yet been passed upon judicially, and are therefore not

clearly defined in their effects. The act declares "that hereafter marriage shall not be held to impose any disability on, or incapacity in, a married woman as to the acquisition, ownership, possession, control, use, or disposition of property of any kind in any trade or business in which she may engage, or for necessaries, and for the use, enjoyment, and improvement of her separate estate, real and personal, or her right and power to make contracts of any kind, and to give obligations binding herself therefor; but every married woman shall have the same right to acquire, hold, possess, improve, control, use, or dispose of her property, real and personal, in right and in expectancy, in the same manner as if she were a *feme sole*,<sup>1</sup> without the intervention of any trustee," except that she cannot convey or mortgage her real estate unless her husband joins with her; and she cannot become accommodation indorser, guarantor or surety for another. It has been judicially decided in construing this act, that a wife cannot be held responsible, even upon a note given by herself, for a debt of her husband's contracting, when she had no part in contracting it and it was not for necessaries in the family. The act also declares that a married woman may dispose of all her property, real and personal, by her will, executed in the same manner as if unmarried; but questions have arisen and have not yet been settled, whether under this law, she can by her will deprive her husband of courtesy in her real estate. Marriage revokes a woman's will previously made. Marriage also revokes a man's previous will so far as to give his surviving widow the same share of his property which she would have taken had he died without any will.

<sup>1</sup> An unmarried woman.

**CLAIMS ON PROPERTY.**

Common law dower prevails, except that it is barred by the judicial sale of the husband's real estate for his debts; and except also that dower attaches to estates in vested remainder of which the husband has not come into possession during his life, as well as to property of which he has had actual possession. Courtesy attaches whether a child has been born or not. If a husband dies without a will and without issue, his widow takes one half his realty for her life instead of one third; and she takes it all in fee absolutely, if he leaves no known heirs. Of the personalty, the widow takes one third absolutely, if there is issue; one half, if there is none. Of the wife's personalty, the widower takes the whole, if there is no issue; otherwise he takes a child's share.

**DIVORCE.**

Causes for absolute divorce are adultery; bigamy; impotency; wilful desertion without reasonable cause for two years; barbarous treatment by husband endangering wife's life or such indignities to her person as to render her condition intolerable, and life burdensome, thereby forcing her to withdraw from the house and family; marriage within the prohibited degrees of affinity or consanguinity; marriage procured by fraud, force, or coercion, and not subsequently confirmed; sentence to imprisonment for term exceeding two years, on conviction for felony; cruel and barbarous treatment by wife rendering husband's condition intolerable, or his life burdensome. Plaintiff must have resided one year in the State.

Divorce from bed and board may be given for adultery; abandonment of wife by husband; and turning wife out of doors.

If divorce is for adultery, the guilty party cannot marry the co-respondent, but otherwise both parties to a divorce are free to marry again. If one party leaves the State and applies for divorce elsewhere, the defendant remaining here, such divorce is not valid here.

## RHODE ISLAND.

### WIFE'S LEGAL STATUS.

ALL property, real and personal, owned by a woman at marriage or afterwards acquired by her, including the proceeds of her own industry, and all rents, profits, and income of such property, are so far secured to her as not to be liable for the debts of her husband; and if she survives him, it becomes her separate property, and is not a part of his estate. She may sell her personal property and make contracts concerning the sale of it, excepting her household furniture, plate, jewels, stock or shares in an incorporated company, debts secured by mortgage and money on deposit, concerning all which kinds of personal property and her real property, she can only contract by joint deed with her husband. But she may control, transfer, or withdraw money which she has deposited in any savings bank, together with interest and dividends. She cannot enter into trade or business alone, unless her husband is insane. If her husband unjustifiably deserts her or fails to provide for her for six months, he being of sufficient ability to provide, she may apply to the court for the powers of a single woman. And if a woman comes into the State without her husband and continues alone for one year, she may thereafter have all the rights and powers of a widow until he shall come into the State, when these powers cease. A wife's statutory separate estate

is not liable for necessaries for herself and children, even if contracted by herself; but she may have an equitable separate estate, held by trustees for her use, which may be liable for her contracts. Her husband may legally collect the rents, income, and profits of her property, unless she gives a written notice to her debtor, lessee, or any corporation in which she owns stock, to pay only to herself. She cannot be an executrix or administratrix. She may make a will, but not so as to deprive her husband of courtesy. A will of personal property may be made at eighteen years of age, but not of realty till twenty-one. Marriage revokes a will previously made.

#### CLAIMS ON PROPERTY.

Common law courtesy and dower prevail. If a husband dies without a will, his widow takes one third of his personality where he leaves issue; otherwise, she takes one half.

#### DIVORCE.

Causes for absolute divorce, or divorce from bed and board, are a marriage originally void or voidable by law; adultery; impotency; extreme cruelty; continued drunkenness; conviction for murder or arson, by which the person convicted is deemed to be civilly dead; such absence or other circumstances as raise the presumption of natural death; wilful desertion for five years, or for a shorter period in the discretion of the court; neglect or refusal of husband, being of sufficient ability, to provide necessaries for wife; and any gross misbehavior and wickedness repugnant to, and in violation of, the marriage covenant. Also a divorce from bed and board may be given for such other causes as may seem to require the same.

The plaintiff must have resided one year in the State. The court may decree custody of children in its discretion, and may allow an innocent wife alimony not exceeding one half her husband's personal estate and the use of half his real estate, and all her separate estate free from her husband's control.

## SOUTH CAROLINA.

### WIFE'S LEGAL STATUS.

ALL property, real and personal, owned by a woman at marriage, or afterwards acquired by her in any way, including her earnings and income from her property, constitutes her separate estate, free from the control and debts of her husband, but liable for her own debts. She may sell and convey it, and dispose of it by will as if she were single, and she may deal in every respect like a single woman. But a husband cannot make a deed or gift to his wife in fraud of his creditors; and she cannot indorse for him, and she is not liable on her own note indorsed by him; nor can she be obliged to support herself, and family. All conveyances, mortgages, and like formal instruments affecting her separate estate, are binding upon it whenever the intention to charge or convey such estate is declared in the instrument itself. She may make a will as if single. She may act as administratrix or executrix. Marriage revokes the will previously made, of either a man or woman, unless such will be made expressly in view of marriage, and providing for wife, or husband, and children.

### CLAIMS ON PROPERTY.

Courtesy was abolished in 1883. Dower prevails, but must be waived if a widow takes the provision made for her by the

statute, as stated below. And if a wife be insane, so proved to the satisfaction of the probate judge though no formal adjudgment thereof has been given, the court may adjudge her to be of unsound mind, and divest her dower. The statute referred to above gives to the widow or widower of one who dies without a will, one third absolutely of all the property, real and personal, of the deceased husband or wife. If there is no issue, but a parent, brother or sister of the deceased, or any descendant of a brother or sister survives, then the widow or widower takes one half absolutely; if no such kindred, the widow or widower takes two thirds, and the rest goes to more distant heirs; if no kin survives, the widow or widower takes it all.

#### DIVORCE.

There is no divorce in this State.

#### TENNESSEE.

##### WIFE'S LEGAL STATUS.

THE common law disabilities on married women in great measure still prevail. At marriage a wife's personal property goes to her husband and becomes his. It is first liable for her ante-nuptial debts; these being paid, his creditors can take the rest of it for his debts contracted after marriage, but his ante-nuptial creditors cannot claim their debts out of it. At his death, he may dispose of it by his will. But if she has a separate equitable estate, held in trust for her, it is only so far subject to his control or debts as may be authorized by the instrument creating the trust. Her real estate, not held in trust, cannot be taken during her life by his creditors, and he cannot sell it unless she joins in the deed.

She cannot bind her general estate by contracts, nor can she convey it without his signature, unless they are separated, one party refusing to live with the other, when she may dispose of her real estate by deed, will, or otherwise, as if unmarried. Her equitable estate she can bind by contracts or dispose of in any way as if single, if the power to do so is not expressly withheld in the instrument creating the trust. But in the case of contracts, her intention to bind her separate estate must be clearly expressed, else her creditors cannot collect therefrom. A wife cannot carry on trade or business, unless her husband is judicially declared insane, when she may trade, contract, sue and be sued as if single. She may dispose of her equitable estate by will, if authorized so to do by the terms of the instrument creating the trust. Her will must in all cases be formally executed and subscribed by two witnesses; an olographic will not being admissible as in case of men and unmarried women.

#### CLAIMS ON PROPERTY.

Common law courtesy and dower prevail. In addition to her dower, a widow may take the homestead to the value of not more than one thousand dollars clear of the husband's debts. If he dies without a will, she also takes a child's share of his personal estate remaining after the payment of his debts; or if there is no issue, she takes the whole. She also takes, in any case, such furniture and other articles as are exempt from execution for debt, free from his creditors, together with money or provisions for a year's support of self and family, in their usual style of life. If there is no kindred who can inherit the property of one who dies without a will, the widow or widower takes it all in fee.

**DIVORCE.**

Causes for absolute divorce are adultery; impotency; bigamy; wilful or malicious desertion without reasonable cause for two years; conviction of infamous crime or of a felony, with sentence to confinement in the penitentiary; attempt by one on life of the other by poison or any means showing malice; refusal of wife to remove with her husband to this State without a reasonable cause, and wilfully absenting herself from him for two years; pregnancy of wife at marriage by another, without knowledge of the husband; habitual drunkenness contracted after marriage.

Causes for divorce from bed and board or absolute divorce at discretion of the court, to be granted the wife, are such cruel and inhuman treatment towards her as renders it unsafe and improper for her to remain under his dominion and control; such indignities to her person as render her condition intolerable, thereby forcing her to leave him; abandoning her or turning her out of doors; refusing or neglecting to provide for her. Plaintiff must have resided in the State two years next prior to the petition.

**TEXAS.****WIFE'S LEGAL STATUS.**

THE community system prevails here. All property, real and personal, owned by either husband or wife at marriage, and all acquired by either after marriage by gift, devise, or descent, together with the increase of all real estate, constitutes the separate property of each; while all property acquired by either during the marriage in any other way, constitutes the community property of both. But the hus-

band has the entire control of the community property, which he may dispose of during the marriage without the wife's consent, and it is liable for all his debts, and for the wife's debts for family necessaries. He has also the management, during the marriage, of the wife's separate property, but he cannot convey it away unless she joins in the deed of conveyance. She may contract for the benefit of her separate property, and she may also contract for family necessaries; husband and wife may be jointly sued on these latter contracts, but if there is insufficient community property to pay the debts, then the wife's separate property may be taken on execution. She may convey or mortgage her property as security for her husband's debts. The wife's separate property must be recorded as such. She cannot carry on trade or business on her own account, nor enter into a business partnership. She may be executrix, administratrix, or guardian. She may make a will of all her property. A woman is of age at her marriage, and may make a will and convey property, though under twenty-one years. The laws concerning the property rights of husband and wife in Texas are construed according to the principles of the Spanish civil law on the subject.

#### CLAIMS ON PROPERTY.

There is no courtesy or dower, the community system prevailing instead. Upon the death of husband or wife, the survivor takes one half of the community property, or if there is no issue, the whole of it. If the deceased leaves no will, the widow or widower also takes one third of the personality of the separate property absolutely, and one third of the realty for life; or if there is no issue, all of the personality, and one half the realty absolutely.

**DIVORCE.**

Causes for divorce are impotency or any other impediment that renders such a contract void; such excesses, cruel treatment, or outrage as renders living together insupportable; conviction of felony after marriage and confinement in state-prison (except where the conviction was had on the testimony of the plaintiff), but suit for divorce on this ground cannot be brought till a year after conviction. Also in favor of the husband, where his wife is taken in adultery, or has voluntarily left his bed and board for three years, with intent of abandonment; and in favor of the wife when he has left her for three years with intent of abandonment, or where he has abandoned her and lived in adultery with another woman.

Plaintiff must be an actual inhabitant of the State and must have resided for six months in the county where suit is brought. The court may make decrees concerning the custody of children and division of property, but cannot compel one party to convey his or her real estate to the other.

**UTAH TERRITORY.****WIFE'S LEGAL STATUS.**

ALL property owned by a woman at marriage or acquired afterwards in any way, is her separate property, which she may control, convey, and dispose of by will as if she was unmarried. She may make contracts of all kinds and bind herself and property by them, and sue and be sued alone. She may carry on any trade or business with, or respecting, her separate property. A woman is of age at eighteen, or sooner if she marries. She may act as executrix or administratrix.

**CLAIMS ON PROPERTY.**

There is no courtesy or dower, unless dower was restored by the act of Congress of March 3, 1887, whereby it was enacted that a widow shall have the right of dower in all the Territories of the United States. If husband or wife dies without a will, the widow or widower takes one third absolutely of the real and personal estate, if there is only one child or descendants thereof; if more than one, then one fourth of the estate goes to widow or widower; if no issue survives, the widow or widower takes half; if no issue, no parent or brother or sister survives, the widow or widower takes all.

**DIVORCE.**

Causes for divorce are adultery; impotency; wilful desertion for more than a year; habitual drunkenness; conviction of felony; extreme cruelty; in favor of wife for wilful neglect of husband to provide her with common necessities of life. A bona fide residence of a year by the plaintiff in the Territory and in a county within the jurisdiction of the court is required. The court may decree alimony, custody of children and allowance for their support.

**VERMONT.****WIFE'S LEGAL STATUS.**

ALL personal property and claims owned by a woman at marriage, or acquired afterwards by any means except by her personal industry or by gift from her husband, and the income and profits thereof, also her real estate and its rents and profits, constitute her separate estate, free from her husband's control or his individual debts; but the annual pro-

ducts of her real estate may be taken for debts created by him for necessaries for his wife and family, or for labor or materials used upon it, or for its cultivation and improvement. Her earnings cannot be trusteeed for her husband's debts. By a law passed in 1884, a wife may bind herself and her property by contracts of all kinds as if unmarried, except that contracts directly between husband and wife are invalid. She may sue and be sued alone. She cannot convey her real estate unless her husband joins in the deed, and she can only become surety for her husband's debts by mortgage of her realty. No husband married since January, 1884, is liable for the ante-nuptial debts of his wife. She may make a will of all her property, real and personal. She cannot be executrix or administratrix.

#### CLAIMS ON PROPERTY.

Courtesy prevails, also dower in such real estate as a husband dies possessed of, but no dower in property conveyed by him in his life-time. If either husband or wife dies without a will and without issue, the survivor takes the real or personal estate of the deceased to the value of two thousand dollars absolutely, and half the residue above that value. Of the personal property where the husband leaves no will, the widow takes one third after payment of claims, or as much more as the Probate Court assigns to her; or she may waive her husband's will and all other claims on the estate, and take this provision instead. If it does not exceed three hundred dollars, all may be assigned to her and the minor children, after payment of funeral charges and expenses of administration, free from debts.

## DIVORCE.

Causes for divorce are adultery; confinement at hard labor in state-prison for three years or more, or for life, when actually confined at time of the action; intolerable severity; wilful desertion for three consecutive years; absence unheard from for seven years; in favor of wife, for gross and wanton or cruel neglect or refusal by the husband to provide suitable maintenance for her, he being of sufficient pecuniary ability to do so.

The parties must have lived together in this State, and the plaintiff must have resided here one full year next before bringing suit; and if the cause occurred out of the State, the parties must have lived together in this State prior thereto, and one of the parties must have been living in this State when the cause occurred. But divorces for adultery, intolerable severity, or desertion for three years may be given, although the cause occurred while the parties were residing in another State, providing the plaintiff has lived in this State two years after such cause occurred, and in the county one full year before bringing suit. The defendant cannot marry again until three years have elapsed after divorce, if the plaintiff live so long, unless he remarries the plaintiff; violation of this rule is punishable by imprisonment at hard labor in the state-prison for from one to five years.

Marriages may be annulled for bigamy; when within the prohibited degrees of affinity or consanguinity; for lack of sufficient age; when consent was obtained by force or fraud; or for idiocy, lunacy, or impotency at the time of the marriage.

## VIRGINIA.

### WIFE'S LEGAL STATUS.

ALL property, real and personal, owned by a woman at marriage, or afterwards acquired by her in any way, including her earnings and profits from trade or business, constitutes her separate estate, free from the control or debts of her husband; and she may hold, control, and use it as if she were single, except that she cannot deprive her husband of his claim to courtesy in her real estate. She may carry on any trade or business, but not as a partner with her husband. She may make contracts as if single, concerning her trade or business and separate estate, or upon the faith and credit thereof, and may sue and be sued concerning them. Every contract which she has power to make, is deemed to be made with reference to her separate estate. If a husband wilfully deserts his wife, and such desertion continues until her death, he thereby loses all claim on her property at her death. She may make a will of her personal property at eighteen, and of her real property at twenty-one, saving to her husband his courtesy. Marriage revokes a will previously made.

### CLAIMS ON PROPERTY.

Common law courtesy and dower prevail. If a wife dies without a will, the widower takes all her personality. The widow of a husband who dies without a will takes one third of his personality if issue survives him; if none, then she takes all the personality that came to him by virtue of his marriage with her, prior to April, 1877, and one half of his other personality. If he leaves issue by a former marriage, she takes all that came to him by the marriage with her, and

one third instead of one half of his other personality. If a wife is convicted of adultery she loses all claim to dower unless her husband afterwards condones the wrong.

#### DIVORCE.

Causes for absolute divorce are adultery; impotency; sentence to confinement in penitentiary; conviction, prior to the marriage, of infamous offence, without the knowledge of the other; indictment on charge of offence punishable by death or confinement in penitentiary, followed by flight from justice and absence for two years; wilful abandonment for five years; pregnancy of wife at marriage by another than the husband, unknown to him; and where wife had been a prostitute, prior to the marriage, and unknown to the husband; provided in the last two cases, and in that of conviction for an infamous offence, that the injured party leaves the other immediately on discovery of the facts.

Divorce from bed and board may be given for cruelty; reasonable apprehension of bodily hurt; abandonment or desertion. One of the parties must have lived in the State at least one year prior to the action. The court may make decrees in its discretion concerning the estate and maintenance of the parties, and custody and maintenance of children.

Marriages may be annulled for bigamy; lack of sufficient age; when one is white, and the other colored; insanity or impotency at time of marriage; or when within the prohibited degrees of consanguinity or affinity.

## WASHINGTON.

## WIFE'S LEGAL STATUS.

ALL property and pecuniary rights belonging either to husband or wife at marriage, or afterwards acquired by gift, by will or inheritance, with the rents, issues, and profits thereof, constitutes the separate property of each, free from the debts or contracts of the other; and each may manage, lease, sell, convey, encumber, or dispose of such property by will, as fully and to the same effect as if unmarried. Property acquired otherwise by either, during the marriage, is community property. Either may maintain an action against the other to recover property of which the latter has obtained possession. They may contract and convey directly with, and to, each other. Neither is liable for the other's ante-nuptial debts, nor for the separate debts of the other incurred after marriage. A wife may receive the wages of her personal labor, and hold the same in her own right. Contracts may be made by, and enforced against, a wife as if she were unmarried. The husband has the management and control of the community real property, but he cannot sell, convey, or encumber it unless his wife joins in the deed. He has also the management and control of the personal property, and may dispose of it as of his separate property, but he cannot by his will deprive his wife of more than half of it. All laws which impose or recognize civil disabilities upon a wife, which are not imposed or recognized as existing as to the husband, are abolished; but this provision of law gives women no right to vote or hold office. The rights and responsibilities of parents, in the absence of misconduct, are equal, and the mother is as fully entitled to the custody, control, and earnings of the children as the father; and on

the death of the father, the mother comes into as full and complete control of the children and their estate as the father does in the case of the mother's death. The earnings and accumulations of the wife and her minor children, living with her, or in her custody while she is living separate from her husband, are her separate property. Women are of age at eighteen. Women have had full political rights twice conferred upon them by the territorial Legislature, and they have voted at several elections during the past six years, held various offices, and for a few years they performed jury duty, both grand and petit; but the law was pronounced unconstitutional by the Supreme Court in 1888.

#### CLAIMS ON PROPERTY.

There is no courtesy or dower, the community system prevailing instead, unless dower was restored by the act of Congress of March 3, 1887, whereby it was enacted that a widow shall have the right of dower in all the Territories of the United States. Whether dower will prevail in the new State of Washington will probably be early settled by legislative action. By the community system the surviving husband or wife takes one half the community property, subject to half the community debts; if the deceased leaves no will and no issue, then the entire community property goes to the surviving widow or widower. Of the separate property, if deceased leaves no will, the widow or widower takes one half the realty if there is but one child or descendants thereof; if more than one child, the survivor takes one third; if no issue, parent, brother, or sister of the deceased survives, all goes to the widow or widower. Of the personal property, the widow or widower takes one half where issue survives; otherwise, the whole.

**DIVORCE.**

Causes for divorce are adultery; impotency; abandonment for one year; cruel treatment or personal indignities rendering life burdensome; habitual drunkenness; neglect or refusal of husband to make suitable provision for his family; imprisonment in penitentiary, if complaint is filed during such imprisonment; marriage obtained by force or fraud, if not followed by subsequent voluntary cohabitation; and for any other cause deemed by the court sufficient when the court is satisfied that the parties can no longer live together. Plaintiff must have lived a year in the Territory. The court may decree, in its discretion, concerning the property of the parties and custody of the children.

A marriage may be declared void for want of sufficient age or mental capacity.

**WEST VIRGINIA.****WIFE'S LEGAL STATUS.**

ALL property, real and personal, owned by a woman at marriage, and all acquired afterwards except from her husband, and the rents, issues, and profits thereof, constitute her separate property which she may hold, convey, and dispose of by will, free from her husband's control or debts, except that she cannot, while living with her husband, convey her real estate unless he joins in the deed. Her property alone is liable for her ante-nuptial debts. But she is not liable for debts for support of herself and children, unless she specially makes such debts her own. She may transact business as if single, and her separate estate is liable for debts thus created. Her personal property and the income

from her real estate may be taken for her debts, but her real estate itself cannot be applied to this purpose, unless a lien or mortgage was placed upon it as security for such debts.

#### CLAIMS ON PROPERTY.

Common law courtesy and dower prevail. If husband or wife dies without a will, the real estate of the deceased goes to the widow or widower, in case no kindred survives. But of the personalty, the widow or widower takes the whole, where there is no issue; otherwise, one third.

#### DIVORCE.

Causes for absolute divorce are adultery; impotency; wilful abandonment for three years; sentence to confinement in the penitentiary; conviction of infamous offence before marriage unknown to the other; pregnancy of wife at time of marriage by another and unknown to the husband; where wife, prior to the marriage, had been notoriously a prostitute, unknown to the husband; or where the husband, prior to the marriage, unknown to the wife, had been notoriously a licentious person.

Causes for divorce from bed and board are cruel or inhuman treatment; reasonable apprehension of bodily hurt; desertion; habit of drunkenness formed since the marriage; non-age. Marriages performed within the State may also be annulled for amalgamation of white and colored races; bigamy; prohibited degrees of consanguinity or affinity; insanity; impotency; non-age.

One of the parties must have been a resident of the State at least one year, and action must be brought in the county in which the parties last cohabited, or of the county where

one of the parties resides. The court may make decrees in its discretion concerning the custody of the children and the maintenance of the parties.

## WISCONSIN.

### WIFE'S LEGAL STATUS.

ALL property, real and personal, owned by a woman at marriage, or afterwards acquired in any way except from her husband, is her separate property, together with the rents, issues and profits thereof, free from the control and debts of her husband. She may control and convey her property and dispose of it by will, as if she were unmarried. Her earnings are her own. She may make contracts concerning her separate estate, and she may sue and be sued alone concerning such contracts. Contracts and conveyances of property directly between husband and wife are valid and will be upheld. She may transact business in her own name free from her husband's control or debts, if he has deserted her or fails to provide for her support and that of her children. The husband is not liable for his wife's ante-nuptial debts. She probably cannot bind herself by a promissory note, or as surety or indorser for another. A mother is entitled to the custody of her children if the father is dead. She may be general guardian of the children's property, and executrix.

### CLAIMS ON PROPERTY.

Common law dower prevails ; also curtesy in the real estate of which a wife is in possession at her death, if she does not provide otherwise by her will. But a widower takes no curtesy if his wife leaves issue by a former husband which

